



THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW

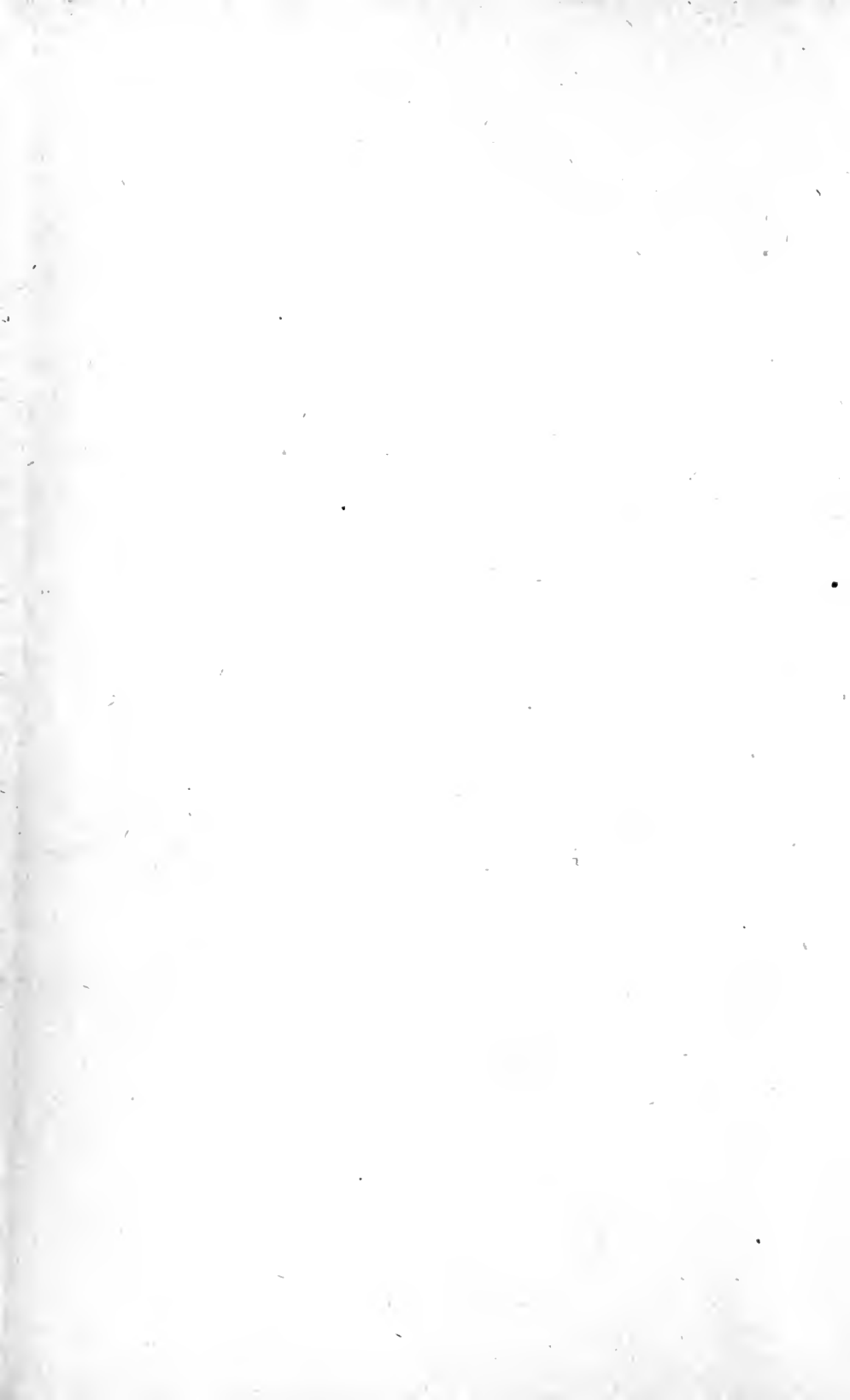
GIFT OF

John Adams

T. H. FLOOD & CO.

LAW BOOKS

CHICAGO, ILL.



ILLINOIS WORKMEN'S COMPENSATION LAW

Legislative - Judicial - Administrative

Defenses Barred in Extra Hazardous Enterprises

AND

Statutes Regulating Employers

INCLUDING SAFETY ACTS RELATED TO COMPEN-
SATION ACT AND STATUTES ENFORCED BY
STATE FACTORY INSPECTOR

ACT AS AMENDED—Briefed—Annotated

SUPREME COURT—Opinions—Abstracts of Decisions

APPELLATE COURT—Opinions—Abstracts of Decisions

AMERICAN COURTS—Federal—State—Digest of Cases—Interpretations

ENGLISH COURTS—Ruling Cases—Citations—Excerpts

INDUSTRIAL BOARD—Digest of Rulings—Opinions—Notes

INDUSTRIAL BOARD—Rules of Procedure

INDUSTRIAL BOARD—Forms of Practice—Reports—Notices

TABLES—Computation—Injury Losses—Life Expectancy

REVIEW—Compensation Legislation—Law of "Master and Servant,"
"Negligence"

STATUTES—Safety—Health—Structural—Occupational Disease—Hours
of Service—Child Labor, etc.

JOHN A. WALGREN

of the Chicago Bar

Editor

"Federal Employers' Liability Act Manual," etc.

T. H. FLOOD & CO., Publishers
CHICAGO

T
W1496i
1916

10 15 16
Copyright, 1916

By

T. H. FLOOD & CO.

TABLE OF CONTENTS

| | |
|--|--------------|
| Workmen's Compensation Act of Illinois | 1, 7 |
| Supreme Court—Opinions | 44, 116, 149 |
| Appellate Court—Opinions—Abstracts | 45, 99, 163 |
| Digest of Decisions | 140-269 |
| Illinois: Supreme Court—Appellate Court—Industrial Board. | |
| American Courts—Federal—State. | |
| English Courts—Ruling Cases—Citations. | |
| Industrial Board—Rules of Procedure | 270 |
| Forms of Practice | 277 |
| Districts | 313 |
| Tables—Present Value Computation | 393 |
| Life Expectancy | 315 |
| Disability Degrees | 314 |
| Accidental Insurance | 315 |
| Certiorari—Forms—Praecipe—Scire Facias—Writ | 395 |
| Review—Compensation Legislation—Law of Master and | |
| Servant—Negligence | 316 |
| Works of Reference | 333 |
| Safety Act | 335 |
| Structural Act | 354 |
| Occupational Disease Act | 361 |
| Blower Act | 368 |
| Noxious Fumes Act | 371 |
| Garment Manufacture Act | 373 |
| Butterine and Ice Cream Manufacture Act | 375 |
| Hours of Service of Women Act | 377 |
| Child Labor Act | 379 |
| Wash Room Act | 389 |
| Miscellaneous Acts | 391 |
| Index | 397 |

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

WORKMEN'S COMPENSATION ACT.

AN ACT to promote the general welfare of the People of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, "*An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment,*" approved June 10, 1911, in force May 1, 1912.

AN ACT to amend Section 3, Sec. 7, Sec. 8, Sec. 9, Sec. 12, Sec. 13, Sec. 14, Sec. 16, Sec. 19, Sec. 21 and Sec. 26, of an Act entitled "*An Act to promote the general welfare of the People of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof and a penalty for its violation; and repealing an Act entitled*" "*An Act to promote the general welfare of the People of this State by providing compensation for accidental injuries or death suffered in the course of employment,*" approved June 28, 1911, and in force May 1, 1912; approved June 28, 1913, and in force July 1, 1913; and adding thereto a new Section 331½.

BRIEF.

Dates of enactments:

Act of 1911: approved June 10, 1911; in force May 1, 1912.

Laws 1911, p. 315; Rev. Stat. 1912; Ch. 48, § 126.

Act of 1913: approved June 28, 1913; in force July 1, 1913.

Laws 1913, p. 336; House Bill No. 841.

Act of 1915: approved June 28, 1915.

Laws 1915, p. 400; Senate Bill No. 66.

Injuries compensated.—Accidental injuries arising out of and in the course of employment causing permanent disfigurement, disability of over 6 working days, or death.

Industries covered.—The building trades; construction, excavating, and electrical work; transportation; mining and quarrying; work with or about explosives, molten metals, injurious gases or vapors, or corrosive acids, and all enterprises in which the law requires protective devices, provided the employer elects. Other employers may elect, but forfeit no defenses if they do not. Compulsory as to State and its municipalities.

Persons compensated.—Private employment: All employees. Public employment: All persons employed by the State, county, municipality, etc., except officials.

Burden of payment.—Entire cost rests on the employer.

Compensation for death:

- (a) To persons wholly dependent or to lineal heirs to whose support the employee had contributed within 4 years, a sum equal to 4 years' earnings, not less than \$1,650 nor more than \$3,500.
- (b) If only dependent collateral heirs survive, such a percentage of the above sum as the support rendered during the last two years was of the earnings of the deceased.
- (c) If no dependents, a burial benefit not exceeding \$150.

Compensation for disability:

- (a) Medical and surgical aid for not over 8 weeks, not over \$200 in value.
- (b) For total disability, beginning with eighth day (second day of permanent), a weekly sum equal to one-half the employee's earnings, \$6

minimum, \$12 maximum, during disability or until payments equal a death benefit; thereafter, if the disability is permanent, a sum annually equal to 8 per cent of a death benefit, but not less than \$10 per month.

- (c) For permanent partial disability, one-half the loss of earning capacity, not more than \$12 per week.
- (d) For certain specific injuries (mutilations, etc.), a benefit of 50 per cent of weekly wages for fixed periods.
- (e) For serious and permanent disfigurement, not causing incapacity and not otherwise compensated, a sum not exceeding one-fourth the death benefits.

No payments are to extend beyond 8 years, except in case of permanent total incapacity.

Lump-sum payments for either death or disability may be substituted by the Industrial Board for periodic payments.

Revision of benefits.—Medical examination may be had not oftener than every 4 weeks. The Industrial Board may, on request, review installment payments within 18 months after the award or agreement thereon.

Insurance.—The employer may insure or maintain a benefit system, but may not reduce his liability under the Act.

Security for payments.—In case of insolvency, awards constitute liens upon all property of the employer within the county, paramount to all other claims, except wages, taxes, mortgages, or trust deeds.

Employers must furnish proof of ability to pay, or give security, insure, or make other provision for security of payment. The rights of an insolvent employer to insurance indemnities are subrogated to injured employees.

Settlement of disputes.—Disputes are determined by

the Industrial Board through an arbitrator or arbitration committee, subject to review by the Board. Questions of law may be reviewed by the courts.

- § 1 Employer may elect whether he accepts provisions of Act—Notices by employer and employee of election to accept, not to accept, and to withdraw.
- § 2 Presumption of acceptance in extra-hazardous employments—except upon notice given.
- § 3 Non-acceptance in extra-hazardous employments precludes certain common law defenses—These enumerated.
- § 4 "Employer" construed.
- § 5 "Employee" construed.
- § 6 Act, where operative, excludes other remedies.
- § 7 Amount of compensation for injury resulting in death—Beneficiaries defined—To whom installments payable.
- § 8 Amount of compensation for injury not resulting in death—First aid—Attendance—Temporary total incapacity—Disfigurement—Partial incapacity—Schedule for losses—Finger—Toe—Hand—Arm—Foot—Leg—Eye—Any two—Complete disability—Death before total payments—Maximum limit—Incompetency—Conservator.
- § 9 Lump sum—Petition—Rejection.
- § 10 Basis for computing compensation—Annual earnings—Grade of employment—Same class of employment—Throughout working days of year—Part of year—Average earnings of same class—Day's work—Subsequent injury—Calculating amount of installments.
- § 11 Act measure of responsibility.
- § 12 Employee to submit to examination—In presence of his own physician—Refusal suspends payments—Duty of physician when patient likely to die.
- § 13 Industrial Board created—Appointment and terms of members.
- § 14 Salaries of members and arbitrators—Assistants—Expenses—Seal.
- § 15 Jurisdiction—Duties.
- § 16 Rules and orders deemed prima facie valid—Oaths—Subpoenas—Examination of witnesses—Service of writs—Refusal—Attachment proceedings—Stenographer—Transcript—Fee—Board to determine reasonableness of all fees for services performed under Act.
- § 17 Blank forms—Free—Record of withdrawals—Proceedings, orders, awards.
- § 18 Board to determine all disputed questions.
- § 19 Disputed questions of law and fact—Board to designate arbitrator—Committee of arbitration for permanent incapacity or death—Petition—Appointment of members—Fee of twenty dollars with request for committee—Failure to de-

posit—Investigation—In vicinity—Decision—Petition for review—Agreed statement of facts—Stenographic report—Authentication—Extension—Examination by Board's physician—Board to review fees of physicians and attorneys—Employee persisting in insanitary and injurious practices—Refusing treatment—Review by Board—Special finding—Request for review—Procedure—Decision otherwise conclusive—Certiorari to Circuit Court for reviewing questions of law—Service—Scire facias—Suit in chancery—Twenty days limit—Judgment—Remanding—Judgment of Circuit Court reviewed by writ of error to Supreme Court to operate as supersedeas—Decision of two members sufficient—Judgment of Circuit Court on certified copy of Board's decision—To tax costs and attorney's fees on non-payment—Appeal—Bond for stay—Review by Board where disability has recurred, increased, diminished or ended—Employee to have one day's notice for each hundred miles and five cents per mile—Name and address for service of notices to be filed with Board—Service with Board.

- § 20 Board to report to Governor—Bulletins—Reports.
- § 21 Claim, payment, award or decision not to be subject to lien, attachment or debt—Claim paramount in insolvency—Exceptions—Right to payments extinguished by death—Except where beneficiary leaves dependents.
- § 22 Agreement with employee within seven days after injury presumed fraudulent.
- § 23 Waiver of compensation void.
- § 24 Notice of accident within 30 days—Mental incapacity—Defects of notice—Contents—Employer knowing facts—Claim to be made within six months—Written claim after payments stopped.
- § 25 Employer relieved from liability by deposit of commuted value of compensation with State Treasurer or bank, or by purchase of annuity.
- § 26 Employer to file sworn statement of financial ability to pay normal compensation on request by Board, or furnish security, or insure, or make other provision—On failure, to be liable within or without Act at employee's option—Publication of notice.
- § 27 Insurance and relief departments not to be affected where full compensation provided—Insuring against compensation allowed—Contracts whereby employee pays premium void.
- § 28 Subrogation of employee in insolvency.
- § 29 Where third party liable for damages for injury or death to employee under Act—Employer subrogated—Where defendant not within Act—Employer to be re-imbursed by employee out of recovery, or subrogated.

- § 30 Employer to report to Board accidental injuries and payments
—Items of report—Only report to State required.
- § 31 "Employer" to include party contracting to have performed for
him hazardous employment, unless requiring liability to be
insured—Fraudulent schemes for evading responsibility.
- § 32 Act not to affect right of action existing at time of taking effect
—Repeal or invalidating of provisions—Intervening period
not to affect time limit for commencing actions—Controversies
under preceding Act.
- § 33 Neglect, refusal, failure, violation of provisions—Misdemeanor
—Fine.
- § 33½ Act may be cited "Workmen's Compensation Act."
- § 34 Invalidity of portion not to affect remainder.
- § 35 Act of 1911 repealed.

SECTION 1. EMPLOYER MAY ELECT WHETHER HE ACCEPTS PROVISIONS OF ACT FOR COMPENSATION FOR INJURIES TO EMPLOYEE—ELECTION OF EMPLOYEE—NOTICES. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any employer in this State may elect to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act, and thereby relieve himself from any liability for the recovery of damages, except as herein provided. ✕

(a) Election by an employer to provide and pay compensation according to the provisions of this Act shall be made by the employer filing notice of such election with the Industrial Board.

(b) Every employer within the provisions of this Act who has elected to provide and pay compensation according to the provisions of this Act shall be bound thereby as to all his employees covered by this Act until January 1st of the next succeeding year and for terms of each year thereafter. *Provided*, any such employer may elect not to provide and pay the compensation herein provided for accidents resulting in either injury or death and occurring after the expiration of any such calendar year by filing notice of such election with the Industrial Board at least sixty days prior to the expiration of any such calendar year, and by posting such notice at a conspicuous place in the plant, shop, office, room, or place where such employee is employed, or by personal service, in written or printed form, upon such employee, at least sixty days prior to the expiration of any such calendar year.

(c) In the event any employer elects to provide and pay the compensation provided in this Act, then every employee of such employer, as a part of his contract of hiring or who may be employed at the time of the taking effect of this Act and the acceptance of its provisions by the employer, shall be deemed to have accepted all the

provisions of this Act and shall be bound thereby unless within thirty days after such hiring or after the taking effect of this Act, and its acceptance by the employer, he shall file a notice to the contrary with the Industrial Board, whose duty it shall be to immediately notify the employer, and if so notified, the employer shall not be deprived of any common law or statutory defenses existing but for this Act; and until such notice to the contrary is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this Act: *Provided, however,* that any employee may withdraw from the operation of this Act upon filing a written notice of withdrawal at least ten days prior to January 1st of any year with the Industrial Board, whose duty it shall be to immediately notify the employer by registered mail, and, if so notified, the employer shall not be deprived of any common law or statutory defenses existing but for this Act, and until such notice to the contrary is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this Act.

(d) Any employer or employee may, without prejudice to any existing right or claim, withdraw his election to reject this Act by giving thirty days' written notice in such manner and form as may be provided by the Industrial Board.

§ 2. PRESUMPTION IN EXTRA-HAZARDOUS OCCUPATIONS—NOTICE OF NON-ELECTION. Every employer enumerated in section 3, paragraph (b), shall be conclusively presumed to have filed notice of his election as provided in section 1, paragraph (a), and to have elected to provide and pay compensation according to the provisions of this Act, unless and until notice in writing of his election to the contrary is filed with the Industrial Board and unless and until the employer shall either furnish to his employee personally or post at a conspicuous place in the plant, shop, office, room or place where such employee is

to be employed, a copy of said notice of election not to provide and pay compensation according to the provisions of this Act; which notice of non-election if filed and posted as herein provided, shall be effective until withdrawn; and such notice of non-election may be withdrawn as provided in this Act.

§ 3. NON-ELECTION—DEFENSES—ABROGATED. (a) In any action to recover damages against an employer, engaged in any of the occupations, enterprises or businesses enumerated in paragraph (b) of this section, who shall elect not to provide and pay compensation to any employee, according to the provisions of this Act, it shall not be a defense, that:

First—The employee assumed the risks of the employment;

Second—The injury or death was caused in whole or in part by the negligence of a fellow-servant; or

Third—The injury or death was proximately caused by the contributory negligence of the employee.

(b) The provisions of paragraph (a) of this section shall only apply to an employer engaged in any of the following occupations, enterprises or businesses, namely:

1. The building, maintaining, removing, repairing or demolishing of any structure, except as provided in sub-section 8 of this section;

2. Construction, excavating or electrical work, except as provided in sub-section 8 of this section.

3. Carriage by land or water and loading or unloading in connection therewith;

4. The operation of any warehouse or general or terminal store houses;

5. Mining, surface mining or quarrying;

6. Any enterprise in which explosive materials are manufactured, handled or used in dangerous quantities;

7. In any enterprise wherein molten metal, or explosive or injurious gases or vapors, or inflammable vapors

or fluids, or corrosive acids, are manufactured, used, generated, stored or conveyed in dangerous quantities;

8. In any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, guarding, use or the placing of machinery or appliances, or for the protection and safeguarding of the employees or the public therein; each of which occupations, enterprises or businesses are hereby declared to be extra-hazardous: *Provided*, nothing contained herein shall be construed to apply to any work, employment, or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise, or lease land for any of such purposes, or to any one in their employ or to any work done on a farm, or country place, no matter what kind of work, or service is being done or rendered. (As amended by an Act approved June 28, 1915, in force July 1, 1915.

§ 4. "EMPLOYER" CONSTRUED. The term "employer" as used in this Act shall be construed to be:

First—The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

Second—Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable corporations or associations who has any person in service or under any contract for hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under this Act may be claimed, shall in the manner provided in this Act have elected to become subject to the provisions of this Act, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this Act.

§ 5. "EMPLOYEE" CONSTRUED. The term "employee" as used in this Act shall be construed to mean:

First—Every person in the service of the State,

county, city, town, township, incorporated village or school district, body politic, or municipal corporations therein, under appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein; and except any employee thereof for whose accidental injury or death arising out of and in the course of his employment compensation or a pension shall be payable to him, his personal representative, beneficiaries or heirs, from any pension or benefit fund to which the State, or any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein contributes in whole or in part: *Provided*, that one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation therein, through its representatives, shall not be considered as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract. X

Second—Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and minors who are legally permitted to work under the laws of the State, who, for the purpose of this Act, shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees, but not including any person whose employment is but casual or who is not engaged in the usual course of the trade, business, profession or occupation of his employer: *Provided*, that employees shall not be included within the provisions of this Act when excluded by the laws of the United States relating to liability of employers to their employees for personal injuries where such laws are held to be exclusive. Cana

§ 6. REMEDY EXCLUSIVE. No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee other than the compensation herein provided shall be available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

§ 7. AMOUNT OF COMPENSATION FOR INJURY RESULTING IN DEATH. The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:

(a) If the employee leaves any widow, child or children whom he was under legal obligation to support at the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(b) If no amount is payable under paragraph (a) of this section and the employee leaves any widow, child, parent, grandparent or other lineal heir, to whose support he had contributed within four years previous to the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(c) If no amount is payable under paragraph (a) or (b) of this section and the employee leaves collateral heirs dependent at the time of the injury to the employee upon his earnings, such a percentage of the sum provided

in paragraph (a) of this section as the average annual contributions which the deceased made to the support of such collateral dependent heirs during the two years preceding the injury bears to his average annual earnings during such two years.

(d) If no amount is payable under paragraph (a) or (b) or (c) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses.

(e) All compensation except for burial expenses, provided for in this section to be paid in case injury results in death, shall be paid in installments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employee were paid; or if this shall not be feasible, then the installments shall be paid weekly: *Provided*, such compensation may be paid in a lump sum upon petition as provided in section 9 of this Act.

(f) The compensation to be paid for injury which results in death, as provided in this section, shall be paid at the option of the employer either to the personal representative of the deceased employee or to his beneficiaries, and shall be distributed to the heirs who formed the basis for determining the amount of compensation to be paid by the employer, the distributees' share to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased: *Provided*, that, in the judgment of the court appointing the personal representative, a child's distributive share may be paid to the parent for the support of the child. The payment of compensation by the employer to the personal representative of the deceased employee shall relieve him of all obligations as to the distribution of such compensation so paid. The distribution by the personal representative of the compensation paid to him by the employer shall be made pursuant to the order of the court appointing him. (As amended by an Act approved June 28, 1915; in force July 1, 1915.

§ 8. AMOUNT OF COMPENSATION FOR INJURY NOT RESULTING IN DEATH. The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

(a) The employer shall provide necessary first aid, medical, surgical and hospital services; also medical, surgical and hospital services for a period not longer than eight weeks, not to exceed, however, the amount of \$200. The employee may elect to secure his own physician, surgeon or hospital services at his own expense.

(b) If the period of temporary total incapacity for work lasts for more than six working days, compensation equal to one-half the earnings, but not less than \$6.00 nor more than \$12.00 per week, beginning on the eighth day of such temporary total incapacity, and continuing as long as the temporary total incapacity lasts, but not after the amount of compensation paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7.

(c) For any serious and permanent disfigurement to the hand, head or face, the employee shall be entitled to compensation for such disfigurement, the amount to be fixed by agreement or by arbitration in accordance with the provisions of this Act, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7; *Provided*, that no compensation is payable under paragraphs (d), (e) or (f) of this section: *And provided, further*, that when the disfigurement is to the hand, head or face as a result of an injury, for which injury compensation is not payable under paragraph (d), (e) or (f) of this section,

compensation for such disfigurement may be had under this paragraph.

(d) If, after the injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to one-half of the difference between the average amount which he earned before the accident, and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. In the event the employee returns to the employment of the employer in whose service he was injured, the employee shall not be barred from asserting a claim for compensation under this Act: *Provided*, notice of such claim is filed with the Industrial Board within eighteen months after he returns to such employment, and the said board shall immediately send to the employer, by registered mail, a copy of such notice.

(e) For injuries in the following schedule, the employee shall receive in addition to compensation during the period of temporary total incapacity for work resulting from such injury, in accordance with the provisions of paragraphs (a) and (b) of this section, compensation, for a further period, subject to the limitations as to time and amounts fixed in paragraphs (b) and (h) of this section, for the specific loss herein mentioned, as follows, but shall not receive any compensation under any other provisions of this Act:

For the loss of a thumb, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during sixty weeks:

For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use,

fifty per centum of the average weekly wage during thirty-five weeks;

For the loss of a second finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during thirty weeks;

For the loss of a third finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during twenty weeks;

For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during fifteen weeks;

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified;

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: *Provided, however,* that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

For the loss of a great toe, fifty per centum of the average weekly wage during thirty weeks;

For the loss of one toe other than the great toe, fifty per centum of the average weekly wage during ten weeks, and for the additional loss of one or more toes other than the great toe, fifty per centum of the average weekly wage during an additional ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during two hundred and fifty weeks;

For the loss of an arm, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during two hundred weeks;

For the loss of a foot, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during one hundred and twenty-five weeks;

For the loss of a leg, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during one hundred and seventy-five weeks;

For the loss of the sight of an eye, fifty per centum of the average weekly wage during one hundred weeks;

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this section: *Provided*, that these specific cases of total and permanent disability shall not be construed as excluding other cases.

(f) In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to 50 per cent of his earnings, but not less than \$6.00 nor more than \$12.00 per week, commencing on the day after the injury and continuing until the amount paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7, and thereafter a pension during life annually equal to 8 per cent of the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7. Such pension shall not be less than \$10.00 per month and shall be payable monthly.

(g) In case death occurs as a result of the injury before the total of the payments made equals the amount

payable as a death benefit, then in case the employee leaves any widow, child or children, parents, grandparents or other lineal heirs, entitled to compensation under section 7, the difference between the compensation for death and the sum of payments made to the employee shall be paid, at the option of the employer, either to the personal representative or to the beneficiaries of the deceased employee, and distributed, as provided in paragraph (f) of section 7, but in no case shall the amount payable under this paragraph be less than \$500.00.

(h) In no event shall the compensation to be paid exceed fifty per centum of the average weekly wage or exceed \$12.00 per week in amount; nor, except in cases of complete disability, as defined above, shall any payments extend over a period of more than eight years from the date of the accident. In case an injured employee shall be incompetent at the time when any right or privilege accrues to him under the provisions of this Act, a conservator or guardian may be appointed, pursuant to law, and may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised said right or privilege; and no limitations of time by this Act provided shall run so long as said incompetent employee is without a conservator or guardian.

(i) All compensations provided in paragraphs (b), (c), (d), (e) and (f) of this section, other than cases of pension for life, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the injury, or if this shall not be feasible, then the installments shall be paid weekly. (As amended by an Act approved June 28, 1915; in force July 1, 1915.

§ 9. LUMP SUM. Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may peti-

tion the Industrial Board, asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such board, it appears to the interest of the parties that such compensation be so paid, the board may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests: *Provided*, that in cases indicating complete disability no petition for a commutation to a lump sum basis shall be entertained by the Industrial Board until after the expiration of six months from the date of the injury, and where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this Act, and liable to pay such compensation, may petition for the appointment of the public administrator, or a conservator, or guardian, where no legal representative has been appointed or is acting for such party or parties so under disability. Either party may reject an award of a lump sum payment of compensation, except an award for compensation under section 7 or paragraph (e) of section 8 or for the injuries defined in the last paragraph of paragraph (e) of section 8 as constituting total and permanent disability, by filing his written rejection thereof with the said board within ten days after notice to him of the award, in which event compensation shall be payable in installments as herein provided. (As amended by Act approved June 28, 1915; in force July 1, 1915.

§ 10. BASIS FOR COMPUTING COMPENSATION. The basis for computing the compensation provided for in sections 7 and 8 of the Act shall be as follows:

(a) The compensation shall be computed on the basis

of the annual earnings which the injured person received as salary, wages or earnings if in the employment of the same employer continuously during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the injured person has not been engaged in the employment of the same employer for the full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same employment and same location, (or if that be impracticable, of neighboring employments of the same kind) have earned during such period.

(d) As to employees in employments in which it is the custom to operate throughout the working days of the year, the annual earnings, if not otherwise determinable, shall be regarded as 300 times the average daily earnings in such computation.

(e) As to employees in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number, if the annual earnings are not otherwise determinable, shall be used instead of 300 as a basis for computing the annual earnings: *Provided*, the minimum number of days which shall be so used for the basis of the year's work shall not be less than 200.

(f) In the case of injured employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earning of adults of the same class in the same (or if that is impracticable then of neighboring) employments.

(g) Earnings, for the purpose of this section, shall be

based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employee, who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this Act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

(i) To determine the amount of compensation for each installment period, the amount per annum shall be ascertained pursuant hereto, and such amount divided by the number of installment periods per annum.

§ 11. COMPENSATION MEASURE OF RESPONSIBILITY EMPLOYER ASSUMED UNDER ACT. The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employees in his employment subject to the provisions of this Act.

§ 12 CLAIMANT TO SUBMIT TO EXAMINATIONS. An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place reasonably convenient for the employee, as soon as practicable after the injury, and also one week after the first examination and thereafter at intervals not oftener than once every four weeks, which examination shall be for the purpose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be

due the employee from time to time for disability according to the provisions of this Act: *Provided, however*, that such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires. In all cases where the examination is made by a surgeon engaged by the employer and the injured employee has no surgeon present at such examination, it shall be the duty of the surgeon making the examination at the instance of the employer to deliver to the injured employee, upon his request or that of his representative, a statement in writing of the condition and extent of the injury to the same extent that said surgeon reports to the employer. If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period. It shall be the duty of surgeons treating an injured employee who is likely to die and treating him at the instance of the employer to have called in another surgeon, to be designated and paid for by either the injured employee or by the person or persons who would become his beneficiary or beneficiaries, to make an examination before the death of such injured employee. (As amended by an Act approved June 28, 1915, in force July 1, 1915.

§ 13. INDUSTRIAL BOARD CREATED—APPOINTMENT—TERM OF OFFICE. There is hereby created a board which shall be known as the Industrial Board, to consist of three members to be appointed by the Governor, by and with the consent of the Senate, one of whom shall be a representative citizen of the employing class operating under this Act, and one of whom shall be a representative citizen chosen from among the employees operating under this Act, and one of whom shall be a representative citizen not identified with either the employing or employee classes, and who shall be designated by the Gov-

ernor as chairman. Appointment of members to places on the first board, or to fill vacancies on said board may be made during recesses of the Senate, but shall be subject to confirmation by the Senate at the next ensuing session of the Legislature. The term of office of members of this board shall be six years, expiring on January 31 of the odd years, except that when first constituted one member shall be appointed for two years, one for four years, and one for six years. Thereafter one member shall be appointed every second year for the full term of six years. Not more than two members of the board shall belong to the same political party. (As amended by an Act approved June 28, 1915; in force July 1, 1915.

§ 14. SALARY—SECRETARY—CLERKS—SEAL. The salary of each of the members of the board so appointed by the Governor shall be five thousand dollars (\$5,000.00) per year. The board shall appoint a secretary and shall employ such assistants and clerical help as may be necessary. The salary of the arbitrators designated by the board shall be at the rate of eighteen hundred dollars (\$1,800.00) per year. The members of the board and the arbitrators shall have reimbursed to them their actual traveling expenses and disbursements made or incurred by them in the discharge of their official duties while away from their places of residence in the performance of their duties. The board shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words, "Industrial Board—Illinois—Seal." (As amended by an Act approved June 28, 1915; in force July 1, 1915.

§ 15. JURISDICTION—DUTIES. The Industrial Board shall have jurisdiction over the operation and administration of this Act, and said board shall perform all the duties imposed upon it by this Act, and such further duties as may hereinafter be imposed by law and the rules of the board not inconsistent therewith.

§ 16. RULES AND ORDERS—PROCEDURE—POWERS. The

board may make rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed *prima facie* reasonable and valid; and the process and procedure before the board shall be as simple and summary as reasonably may be. The board, or any member thereof, or any arbitrator designated by said board shall have the power to administer oaths, subpoena and examine witnesses, to issue subpoenas *duces tecum* requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry, and to examine and inspect the same and such places or premises as may relate to the question in dispute. Said board, or any member thereof, or any arbitrator designated by said board, shall, on written request of either party to the dispute, issue subpoenas for the attendance of such witnesses and production of such books, papers, records, and documents as shall be designated in said applications, providing however, that the parties applying for such subpoena shall advance the officer and witness fees provided for in suits pending in the circuit court. Service of such subpoenas shall be made by any sheriff or constable or other person. In case any person refuses to comply with an order of the board or subpoena issued by it or any member thereof, or any arbitrator designated by said board, or to permit an inspection of places or premises, or to produce any books, papers, records, or documents, or any witness refuses to testify to any matter regarding which he may be lawfully interrogated, the County Court of the county in which said hearing or matter is pending, on application of any member of the board or any arbitrator designated by the board, shall compel obedience by attachment proceedings, as for contempt, as in a case of disobedience of the requirements of a subpoena from such court on a refusal to testify therein.

The board at its expense shall provide a stenographer to take the testimony and record of proceedings at the

hearings before an arbitrator, committee of arbitration, or the board, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him therefor of five cents per one hundred words for the original and three cents per one hundred words for each copy of such transcript.

The board shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act. (As amended by an Act approved June 28, 1915; in force July 1, 1915.

§ 17. **BLANK FORMS—BOOKS—RECORDS.** The board shall cause to be printed and furnish free of charge upon request by any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act, and the performance of the duties of the board; it shall provide a proper record in which shall be entered and indexed the name of any employer who shall file a notice of declination or withdrawal under this Act, and the date of the filing thereof; and a proper record in which shall be entered and indexed the name of any employee who shall file such a notice of declination or withdrawal, and the date of the filing thereof; and such other notices as may be required by the terms and intendment of this Act; and records in which shall be recorded all proceedings, orders and awards had or made by the board, or by the arbitration committees, and such other books or records as it shall deem necessary, all such records to be kept in the office of the board.

§ 18. **BOARD TO DETERMINE QUESTIONS.** All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Industrial Board.

§ 19. DISPUTED QUESTIONS OF LAW OR FACT—ARBITRATOR—COMMITTEE—DECISION—PETITION FOR REVIEW—PHYSICIAN—DECISION OF BOARD—REVIEW BY SUPREME COURT—CIRCUIT COURT TO RENDER JUDGMENT—REVIEW AFTER AWARD—ADDRESS TO BE FILED—NOTICE. Any disputed questions of law or fact upon which the employer and employee or personal representative cannot agree, shall be determined as herein provided.

(a) It shall be the duty of the Industrial Board, upon notification that the parties have failed to reach an agreement, to designate an arbitrator: *Provided*, that if the compensation claimed is for a partial permanent or total permanent incapacity or for death, then the dispute may, at the election of either party, be determined by a committee of arbitration, which election for a determination by a committee shall be made by petitioner filing with the board his election in writing with his petition or by the other party filing with the board his election in writing within five days of notice to him of the filing of the petition, and thereupon it shall be the duty of the Industrial Board, upon either of the parties having filed their election for a committee of arbitration as above provided, to notify both parties to appoint their respective representatives on the committee of arbitration. The board shall designate an arbitrator to act as chairman, and if either party fails to appoint its member on the committee within seven days after notification as above provided, the board shall appoint a person to fill the vacancy and notify the parties to that effect. The party filing his election for a committee of arbitration shall with his election deposit with the board the sum of twenty dollars, to be paid by the board to the arbitrators selected by the parties as compensation for their services as arbitrators, and upon a failure to deposit as aforesaid, the election shall be void and the determination shall be by an arbitrator designated by the board.

The members of the committee of arbitration appointed by either of the parties or one appointed by the board to fill a vacancy by reason of the failure of one of the parties to appoint, shall not be a member of the board or an employee thereof.

(b) The arbitrator or committee of arbitration shall make such inquiries and investigations as he or they shall deem necessary, and may examine and inspect all books, papers, records, places, or premises relating to the questions in dispute, and hear such proper evidence as the parties may submit. The hearings before the arbitrator or committee of arbitration shall be held in the vicinity where the injury occurred, after ten days' notice of the time and place of such hearing shall have been given to each of the parties or their attorneys of record. The decision of the arbitrator or committee of arbitration shall be filed with the Industrial Board, which board shall immediately send to each party or his attorney a copy of such decision, together with a notification of the time when it was filed, and unless a petition for a review is filed by either party within fifteen days after the receipt by said party of the copy of said decision and notification of time when filed, and unless such party petitioning for a review shall within twenty days after the receipt by him of the copy of said decision, file with the board either an agreed statement of the facts appearing upon the hearing before the arbitrator or committee of arbitration, or if such party shall so elect, a correct stenographic report of the proceedings at such hearings, then the decision shall become the decision of the Industrial Board: *Provided*, that such Industrial Board may for sufficient cause shown grant further time, not exceeding thirty days, in which to petition for such review or to file such agreed statement or stenographic report. Such agreed statement of facts or correct stenographic report, as the case may be, shall be authenticated by the signatures of

the parties or their attorneys and in the event they do not agree as to the correctness of the stenographic report it shall be authenticated by the signature of the arbitrator designated by the board.

(c) The Industrial Board may appoint, at its expense, a duly qualified, impartial physician, to examine the injured employee and report to the board. The fee for this service shall not exceed five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases. The fees and the payment thereof of all attorneys and physicians for services authorized by the board under this Act, shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the Industrial Board.

(d) If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the board may, in its discretion, reduce or suspend the compensation of any such injured employee.

(e) If a petition for review and agreed statement of facts or stenographic report is filed, as provided herein, the Industrial Board shall promptly review the decision of the arbitrator or committee of arbitration and all questions of law or fact which appear from the said statement of facts or stenographic report, and such additional evidence as the parties may submit. After such hearing upon review, the board shall file in its office its decision thereon, and shall immediately send to each party or his attorney a copy of such decision and a notification of the time when it was filed. Such review and hearing may be held in its office, or elsewhere, as the board may deem advisable: *Provided*, the board shall give ten days' notice of the time and place thereof to the parties or their at-

torneys. In any case the board in its decision may in its discretion find specially upon any question or questions of law or fact which shall be submitted in writing by either party, whether ultimate or otherwise. Any party may, within twenty days after the receipt of notice of the board's decision, or within such further time, not exceeding thirty days, as the board may grant, file with the board either an agreed statement of the facts appearing upon the hearing, or, if such party shall so elect, a correct stenographic report of the additional proceedings presented before the board, in which report the party may embody a correct statement of such other proceedings in the case as such party may desire to have reviewed, such statement of facts or stenographic report to be authenticated by the signatures of the parties or their attorneys, and in the event that they do not agree, then the authentication of such stenographic report shall be by the signature of the chairman of the board. The applications for adjustment of claim and other documents in the nature of pleadings filed by either party, together with the decisions of the arbitrator and of the Industrial Board, and the statement of facts or stenographic reports hereinbefore provided for in paragraphs (b) and (c) shall be the record of the proceedings of said board, and shall be subject to review as hereinafter provided.

(f) The decision of the Industrial Board, acting within its powers, according to the provisions of paragraph (e) of this section, and of the arbitrator or committee of arbitration, where no review is had and his or their decision becomes the decision of the Industrial Board in accordance with the provisions of this section, shall, in the absence of fraud, be conclusive unless reviewed as in this paragraph hereinafter provided.

(1) The Circuit Court of the county where any of the parties defendant may be found shall by writ of *certiorari* to the Industrial Board have power to review all

questions of law presented by such record. Such writ shall be issued by the clerk of such court upon *praecipe*. Service upon any member of the Industrial Board or the secretary thereof shall be service on the board, and service upon other parties in interest shall be by *scire facias*, or service may be made upon said board and other parties in interest by mailing notice of the commencement of the proceedings and the return day of the writ to the office of said board and the last known place of residence of the other parties in interest at least ten days before the return day of said writ; or (2) any party in interest may commence a suit in chancery in the Circuit Court of the county where any of the parties defendant may be found to review the decision of the board only for errors of law appearing on the said record of the said board. Such suit by writ of *certiorari* or in chancery shall be commenced within twenty days of the receipt of notice of the decision of the board.

The court may confirm or set aside the decision of the arbitrator or committee of arbitration or Industrial Board. If the decision is set aside and the facts found in the proceedings before the board are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Industrial Board for further proceedings, and may state the questions requiring further hearing, and give such other instructions as may be proper.

Judgments, orders and decrees of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon writ of error. Upon motion, the trial court shall enter of record a certificate that the cause is, or is not, in his opinion, one proper to be reviewed by the Supreme Court. Upon filing with the clerk of the Supreme Court a certified copy of such a certificate that the cause is one proper to be reviewed, writ of error shall issue. If the trial court certifies that the cause is not one proper

to be reviewed, the Supreme Court, in its discretion, may, nevertheless, order that a writ of error issue. A writ of error, when issued, shall operate as a *supersedeas*.

The decision of any two members of a committee of arbitration or of the Industrial Board shall be considered the decision of such committee or board, respectively.

(g) Either party may present a certified copy of the decision of the Industrial Board, when no proceedings for review thereof have been taken, or of the decision of such arbitrator or committee of arbitration when no claim for review is made, or of the decision of the Industrial Board after hearing upon review, providing for the payment of compensation according to this Act, to the Circuit Court of the county in which such accident occurred or either of the parties are residents, whereupon such court shall render a judgment in accordance therewith; and in case where the employer does not institute proceedings for review of the decision of the Industrial Board and refuses to pay compensation according to the award upon which such judgment is entered, the court shall, in entering judgment thereon, tax as costs against him the reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment, for the person in whose favor the judgment is entered, which judgment and costs, taxed as herein provided shall, until and unless set aside, have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed. The Circuit Court shall have power, at any time, upon application, to make any such judgment conform to any modification required by any subsequent decision of the Supreme Court upon appeal, or as the result of any subsequent proceedings for review, as provided in this Act.

Judgment shall not be entered until fifteen days' notice of the time and place of the application for the en-

try of judgment shall be served upon the employer by filing such notice with the Industrial Board; which board shall, in case it has on file the address of the employer or the name and address of its agent, upon whom notices may be served, immediately send a copy of the notice to the employer or such designated agent; and no judgment shall be entered in the event the employer shall file with the said board its bond, with good and sufficient surety in double the amount of the award, conditioned upon the payment of said award in the event the said employer shall fail to prosecute with effect proceedings for review of the decision, or the said decision, upon review, shall be affirmed.

(h) An agreement or award under this Act, providing for compensation in installments, may at any time within eighteen months after such agreement or award be reviewed by the Industrial Board at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended; and on such review, compensation payments may be re-established, increased, diminished or ended: *Provided*, that the board shall give fifteen days' notice to the parties of the hearing for review: *And provided, further*, any employee, upon any petition for such a review being filed by the employer, shall be entitled to one day's notice for each one hundred miles necessary to be traveled by him in attending the hearings of the board upon said petition and three days in addition thereto, and such employee shall, at the discretion of the board, also be entitled to five cents per mile necessarily traveled by him in attending such hearing, not to exceed a distance of 300 miles, to be taxed by the board as costs and deposited with the petition of the employer.

(i) Each party, upon taking any proceedings or steps whatsoever before any abritrator, committee of arbitra-

tion, industrial board or court, shall file with the Industrial Board his address, or the name and address of an agent upon whom all notices to be given to such party shall be served, either personally or by registered mail addressed to such party or agent at the last address so filed with the Industrial Board: *Provided*, that in the event such party has not filed his address, or the name and address of an agent, as above provided, service of any notice may be had by filing such notice with the Industrial Board. (As amended by Act approved June 28, 1915; in force July 1, 1915.

§ 20. INDUSTRIAL BOARD TO REPORT TO GOVERNOR. The Industrial Board shall report in writing to the Governor on the 30th day of June, annually, the details and results of its administration of this Act, in accordance with the terms of this Act, and may prepare and issue such special bulletins and reports from time to time as in the opinion of the board, seems advisable.

§ 21. AWARD NOT SUBJECT TO LIEN—LIEN WHERE EMPLOYER INSOLVENT—DEATH. No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages. In case of insolvency of the employer, every decision of the Industrial Board for compensation under this Act shall, upon the filing of a certified copy of the decision with the recorder of deeds of the county, constitute a lien upon all property of the employer within said county, paramount to all other claims or liens, except for wages and taxes, and mortgages or trust deeds, and such liens shall be enforced by order of the court. Any right to receive compensation hereunder shall be extinguished by the death of the person or persons entitled thereto, subject to the provisions of this Act relative to compensation for death received in the course of employment: *Provided*, that upon the death of a beneficiary, who is receiving compen-

sation provided for in section 7, leaving surviving a parent, sister or brother of the deceased employee, at a time of his death dependent upon him for support, who were receiving from such beneficiary a contribution to support, then that proportion of the compensation of the beneficiary which would have been paid but for the death of the beneficiary, but in no event exceeding said unpaid compensation, which the contribution of the beneficiary to the dependent's support within one year prior to the death of the beneficiary bears to the compensation of the beneficiary within that year, shall be continued for the benefit of such dependents, notwithstanding the death of the beneficiary. (As amended by Act approved June 28, 1915; in force July 1, 1915.

§ 22. CONTRACT WITHIN SEVEN DAYS AFTER INJURY PRESUMED FRAUDULENT. Any contract or agreement made by any employer or his agent or attorney with any employee or any other beneficiary of any claim under the provisions of this Act within seven days after the injury shall be presumed to be fraudulent.

§ 23. WAIVER OF PROVISIONS MUST BE APPROVED BY INDUSTRIAL BOARD. No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the Industrial Board.

§ 24. NOTICE OF ACCIDENT. No proceedings for compensation under this Act shall be maintained unless notice of the accident has been given the employer as soon as practicable, but not later than 30 days after the accident. In cases of mental incapacity of the employee, notice must be given within six months after such accident. No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings by arbitration or otherwise by the employee, unless the employer proves that he

is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the accident shall in substance apprise the employer of the claim of compensation made and shall state the name and address of the employee injured, the approximate date and place of the accident, if known, and in simple language the cause thereof; which notice may be served personally or by registered mail, addressed to the employer at his last known residence or place of business: *Provided*, that the failure on the part of any person entitled to such compensation to give such notice shall not relieve the employer from his liability for such compensation, when the facts and circumstances of such accident are known to such employer, his agent or vice principal in the enterprise. No proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the accident, or in the event that payments have been made under the provisions of this Act, unless written claim for compensation has been made within six months after such payments have ceased.

§ 25. HOW EMPLOYER MAY BE RELIEVED OF LIABILITY FOR COMPENSATION. Any employer against whom liability may exist for compensation under this Act, may, with the approval of the Industrial Board, be relieved therefrom by:

(a) Depositing the commuted value of the total unpaid compensation for which such liability exists, computed at three per centum per annum in the same manner as provided in section 9, with the State Treasurer, or county treasurer in the county where the accident happened, or with any State or National bank or trust company doing business in this State, or in some other suitable depository approved by the Industrial Board: *Provided*, that any such depository to which such compensation may be paid shall pay the same out in installments as in this Act provided, unless such sum is ordered paid in,

and is commuted to, a lump sum payment in accordance with the provisions of this Act.

(b) By the purchase of an annuity, in an amount of compensation due or computed, under this Act within the limitation provided by law, in any insurance company granting annuities and licensed or permitted to do business in this State, which may be designated by the employer, or the Industrial Board.

§ 26. PROVISION TO BE MADE BY EMPLOYER ELECTING TO PAY COMPENSATION—APPROVAL OF INDUSTRIAL BOARD—WHEN PROVISION NOT MADE OR NOT APPROVED—"NORMAL LIABILITY," HOW MEASURED. (a) An employer who elects to provide and pay the compensation provided for in this Act, shall, within ten (10) days of receipt by the employer of a written demand by the Industrial Board, (1) file with the board a sworn statement showing his financial ability to pay the compensation provided for in this Act, normally required to be paid, or (2) furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, normally required to be paid, or (3) insure to a reasonable amount his normal ability to pay such compensation in some corporation, association or organization authorized, licensed or permitted to do such insurance business in this State, or (4) make some other provisions for the securing of the payment of compensation provided for in this Act, normally required to be paid, and shall, within twenty (20) days of the receipt of such written demand, furnish to the board evidence of his compliance with one of the above alternatives: *Provided*, that the sworn statement of financial ability, or security, indemnity or bond, or amount of insurance or other provision, filed, furnished, carried or made by the employer, as the case may be, shall be subject to the approval of the board, upon the approval of which the board shall send to the employer written notice of its approval thereof: *And provided*,

further, that demand shall not be made upon the employer by the board oftener than once in any calendar year.

(b) If no sworn statement or no security, indemnity or bond, or no insurance, is filed, furnished or carried, or other provisions made by the employer within ten (10) days of receipt by the employer of the written demand provided for in paragraph (a), or if the statement, security, indemnity, bond or amount of insurance filed, furnished or carried, or other provision made by the employer, as provided in paragraph (a), shall not be approved by the board, and written notice of such non-approval shall be given to the employer and the employer shall not comply with one of the alternatives of paragraph (a) of this section within ten (10) days after the receipt by the employer of such written notice of non-approval, then the employer shall be liable for compensation to any injured employee, or his personal representative, according to the terms of this Act, or for damages in the same manner as if the employer had elected not to accept this Act, at the option of such employee, or his personal representative: *Provided*, such option is exercised and written notice thereof is given to the employer within thirty (30) days after the accident to such employee; otherwise, the employer shall be liable only for the compensation payable according to the provisions of this Act: *And provided, further*, that if at any time thereafter the employer shall comply with any of the alternatives of paragraph (a), then as to all accidents occurring after the said compliance, the employer shall only be liable for compensation according to the terms of this Act: *And provided, further*, that, upon the failure of any employer to comply with the provisions of this section, the Industrial Board may, for the purpose of furnishing notice to the employees of such employer, publish the fact of such failure by such employer in any

newspaper having a general circulation in the county where such employer does business. (As amended by an Act approved June 28, 1915; in force July 1, 1915.

§ 27. ACT NOT TO AFFECT EXISTING INSURANCE NOR PREVENT EMPLOYER FROM INSURING—NOR EMPLOYEE FROM INSURING FOR ADDITIONAL BENEFITS. (a) This Act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit, or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him: *Provided*, the employer contributes to such association or department an amount not less than the full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This Act shall not prevent the organization and maintaining under the insurance laws of this State of any benefit or insurance company for the purpose of insuring against the compensation provided for in this Act, the expense of which is maintained by the employer. This Act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

(b) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(c) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is required to pay any premium or premiums for insurance against the compen-

sation provided for in this Act shall be null and void, and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or both, in the discretion of the court.

§ 28. **INSOLVENT EMPLOYER—SUBROGATION.** Any person, who shall become entitled to compensation under the provisions of this Act, shall, in the event of his inability to recover such compensation from the employer on account of his insolvency, be subrogated to all the rights of such employer against any insurance company, association or insurer which may have insured such employer against loss growing out of the compensation required by the provisions of this Act to be paid by such employer, and, in such event only, the said insurance company, association, or insurer shall become primarily liable to pay to the employee or his personal representative the compensation required by the provisions of this Act to be paid by such employer.

§ 29. **WHERE THIRD PARTY LIABLE.** Where an injury or death for which compensation is payable by the employer under this Act was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, such other person having also elected to be bound by this Act, then the right of the employee or personal representative to recover against such other person shall be subrogated to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained, in an amount not exceeding the aggregate amount of compensation payable under this Act, by reason of the injury or death

of such employee. Where the injury or death for which compensation is payable under this Act was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person having elected not to be bound by this Act, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act, but in such case if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or his personal representative: *Provided*, that if the injured employee or his personal representative shall agree to receive compensation from the employer or to institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employee or personal representative and may maintain, or in case an action has already been instituted, may continue an action either in the name of the employee or personal representative or in his own name against such other person for recovery of damages to which but for this section the said employee or personal representative would be entitled, but such employer shall nevertheless pay over to the injured employee or personal representative all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act and all costs, attorneys' fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability.

§ 30. REPORT OF ACCIDENT, ETC., BY EMPLOYER TO INDUSTRIAL BOARD. It shall be the duty of every employer within the provisions of this Act to send to the Industrial Board in writing an immediate report of all accidental injuries arising out of or in the course of the employment and resulting in death; it shall also be the duty of every such employer to report between the 15th and the 25th of each month to the Industrial Board all accidental injuries for which compensation has been paid under this Act, which injuries entail a loss to the employee of more than one week's time, and in case the injury results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All reports shall state the date of the injury, including the time of day or night, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the character of the injury, the length of disability, and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured person, or to his legal representatives or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians,' surgeons' and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The making of reports as provided herein shall release the employer covered by the provisions of this Act from making such reports to any other officer of the State.

§ 31. CONTRACT FOR EXTRA-HAZARDOUS WORK—BOTH PARTIES LIABLE. Any person, firm or corporation, who undertakes to do or contracts with others to do, or have done for him, them or it, any work enumerated as extra-hazardous in paragraph (b), section 3, requiring employment of employees in, on or about the premises where he, they or it, as principal or principals, contract to do such

work, or any part thereof, and does not require of the person, firm or corporation undertaking to do such work for said principal or principals, that such person, firm or corporation undertaking to do such work shall insure his, their or its liability to pay the compensation provided in this Act to his, their or its employees and any such person, firm or corporation who creates or carries into operation any fraudulent scheme, artifice or device to enable him, them or it to execute such work without such person, firm or corporation being responsible to the employee, his personal representative or beneficiary entitled to such compensation under the provisions of this Act, such person, firm or corporation shall be included in the term "employer" and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of this Act.

§ 32. ACT NOT RETROACTIVE—CLAIM UNDER PREVIOUS ACT. No right of action for damages, at common law or under any other statute, existing at the time of the taking effect of this Act, shall be affected by this Act.

If the provisions of this Act relating to compensation for injuries to or death of employees shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal or final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury. Any claim, disagreement or controversy existing or arising under "An Act to promote the general welfare of the People of this State, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, shall be adjusted in accordance with

the provisions of said Act notwithstanding the repeal thereof, or may, by agreement of the parties, be adjusted in accordance with the method of procedure provided in this Act for the adjustment of differences, jurisdiction to adjust such differences so submitted by the parties being hereby conferred upon the Industrial Board or committee of arbitration provided for in this Act.

§ 33. PENALTIES. Any wilful neglect, refusal, or failure to do the things required to be done by any section, clause, or provision of this Act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing the provisions of this Act, shall be deemed a misdemeanor, punishable by a fine of not less than \$10.00 nor more than \$500.00 at the discretion of the court.

§ 33½. CITING ACT. This Act May be cited as the Workmen's Compensation Act. (Added by an Act approved June 28, 1915.

§ 34. PARTIAL INVALIDITY. The invalidity of any portion of this Act shall in no way affect the validity of any other portion thereof which can be given effect without such invalid part.

§ 35. REPEAL OF ACT OF 1911. That an Act to promote the general welfare of the State of Illinois by providing compensation for accidental injuries or death suffered in the course of employment, approved June 10, 1911, in force May 1, 1912, be, and the same is, hereby repealed.

WORKMEN'S COMPENSATION ACT

of the

State of Illinois

Construed in

OPINIONS

by the

SUPREME COURT

SPECIFIC NOTES AND REFERENCES IN DIGEST AND INDEX

Deibeikis v The Link-Belt Company, Vol. 261,
Page 454; 104 N. E. 211.

Constitutionality of Act—Police power—Class legis-
lation—Common law rules—Defenses—Deprivation of
property—Search and seizure—Trial by jury—Elective
feature—Declaration of public policy 46

Strom v Postal Telegraph Cable Co., 271—544.

Constitutionality of Act—Defenses barred..... 126

Uphoff v Industrial Board, 271—312.

Act of 1913—Farm laborers excluded—"Enterprise"
construed—Extra-hazardous occupations—Decision of
Industrial Board acting within powers 75

Frey v Kerens-Donnewald Coal Co., 271—121.

Constitutionality of Act—Printing of bill—Award for
paralysis. 87

Dragovich v Iroquois Iron Company, 269—478.

Constitutionality of Act—Printing of amendments to
bill—Course of employment—Verdict for compen-
sation 81

Staley, Admx. v Illinois Central R. Co., 268—
356.

Act excluded by Federal Employers' Liability Law—
Interstate commerce 91

Courter v Simpson Construction Co., 264—488.

Review by certiorari of Circuit Courts of decisions of
Industrial Board—Jurisdiction of Supreme Court inhib-
ited by Constitution 68

Dietz v Big Muddy Coal & Iron Co., 263—480.

Constitutionality of Act—Elective feature—Defenses barred—Automatic election by employer and employee in extra-hazardous occupations 60

Crooks v Tazewell Coal Co., 263—343.

Constitutionality of Act—Defenses barred—Contributory negligence reducing damages—Action at law by employee 51

Opinions filed in 1916 on pp. 116-139 and p. 149.

APPELLATE COURT

Nosil v Ellis Stamp Co., 191—538.

Act as defense—Waiver by affidavit of merits of new defense.

Krisman v Johnston City &c Co., 190—612.

Presumption of law as to employer and employee being within Act—Proof of notice of non-acceptance. 112

Synkus v Big Muddy &c Co., 190—602.

Notice of non-acceptance of Act in force until withdrawn—Burden of proof of notice—Defenses barred.

French v Cloverleaf Mining Co., 190—400.

Non-acceptance of Act—Defenses barred..... 113

Giachas v Cable Co., 190—285.

Computation of compensation under Act—Loss of arm—Offer of employment.

Bateman v Carterville &c Coal Co., 188—357.

Non-acceptance of Act—Proof—Notice valid till withdrawn—Mining and safety Acts.

Favro v Superior Coal Co., 188—203.

Non-acceptance by employer—Employee's right of election precluded—Allegations—Mining and Safety Acts.

Brown v City of Decatur, 188—147.

Term "Structure" in Act—Waterworks plant—Course of employment 99

Price v Cloverleaf Coal Mining Co., 188—27.

Non-acceptance of Act—Allegation of negligence necessary—Defenses barred—Contributory negligence reducing damages—Mining and Safety Acts—Instruction

Watters v Krochler Mfg. Co., 187—548.

Amount of compensation—Disfigurement—Injuries to fingers.

Forrest v Roper Furniture Co., 187—504.

Factory and Safety Acts—Loss of sight of eye—Proof of safety device on market.

Matecny v Vierling Steel Works, 187—448.

Beneficiaries—Dependent heirs—Lump sum award—Cessation of payments on death of beneficiary 105

Knopp v American Car & Foundry Co., 186—605.

Course of employment—Interference by bystander—Injury to hand from trip hammer.

Staley v Illinois Central R. Co., 186—593.

Mode of instituting suit under Act—Lump sum award—Federal Employers' Liability Act (Reversed by Supreme Court).

Burnes v Swift & Co., 186—460.

Safety Acts—"Intentional omission" in Act of 1911.

Stevenson v Illinois Watch Case Co., 186—418.

Dependents—Proof of—Disfigurement—Injury to fingers.

Joseph Deibeikis v The Link Belt Company

261 Ill. Sup. 455.

Feb. 24, 1914.

MR. CHIEF JUSTICE COOK delivered the opinion of the court.

"This appeal brings in question the *constitutionality* of the original Workmen's Compensation Act of this state (Laws of 1911, p. 315). This Act has been repealed by the present Workmen's Compensation Act (Laws of 1913, p. 335), but the facts upon which this action is based arose under the former Act and are governed by it.

"Appellant, Joseph Deibeikis, was an employee of the Link Belt Company, appellee. On January 31, 1913, appellant brought his action on the case against appellee to recover for injuries which it was alleged he had sus-

tained while employed in appellee's machine shop. To the declaration appellee pleaded the general issue and a special plea, in which it is set forth that before the alleged grievances mentioned in the declaration had been committed both appellant and appellee had elected to be governed by the terms of the Workmen's Compensation Act; that the appellee had posted the required *notice* and had done all that the Act required of it; that appellant had accepted certain sums of money under the Act and that appellee was ready to pay any further sums due; that appellant was governed by the terms of that Act and should adjust his grievances thereunder, instead of bringing his action on the case. To the special plea appellant filed a general and special demurrer, in which it was assigned that the Workmen's Compensation Act of 1911 was invalid and contrary to the constitution of Illinois. The demurrer was overruled, and appellant having elected to stand by his demurrer, judgment was entered against him for costs, and this appeal was perfected.

"It will be necessary, in order to intelligently discuss the questions raised, to set out a portion of the Act of 1911. The first three sections are as follows." * * * *
(The provisions of the remaining sections are thereupon briefly referred to.)

"Counsel for appellant have not made any extensive argument in support of any of the points urged, having contented themselves with simply stating the points made. The matter is so presented that it has been somewhat difficult to determine the exact grounds upon which counsel rely for reversal. As we understand the points made, the grounds relied upon are that the Act is unconstitutional for the following reasons: (1) It is not a proper exercise of the police power; (2) it is class legislation; (3) it delegates judicial powers; (4) it vests the judiciary with executive powers; (5) it deprives appellant of the right of trial by jury; (6) it subjects appellant to unreasonable search; (7) it deprives appellant of his right

to contract and of his natural right of waiver. The validity of certain sections of the Act is questioned upon the ground that they violate Section 13 of Article 4 of the Constitution. The question of the validity of these particular sections is not involved in this appeal, for the reason that it does not appear from the record that any right of appellant is affected by them; hence that question will not be discussed or determined in this case, but will be reserved to such time, if any, when a case shall arise wherein the question is necessarily involved.

“Statutes similar to the one here under discussion have been passed in various states of the union, and in a number of those states the courts have decided some of the questions here raised by appellant contrary to his contentions. Among these cases are *Borgnis v Falk Co.*, 147 Wis. 327; *State v Creamer*, 85 Oh. St. 349; *Sexton v Newark District Telegraph Co.*, 86 Atl. Rep. (N. J.) 451; opinion of Justices, 209 Mass. 607.

“Taking up the points raised by appellant in the order in which they have been set out above, we are unable to see where it can be contended that this Act is an attempt to exercise the police power. It will be observed that the Act is elective, and that no employer or employee is compelled to accept or come within its provisions unless he chooses to do so. Therefore, unless the employer or the employee elects to come within the provisions of the Act he is not affected by any of the provisions thereof. This is subject, however, to one exception. Under the conditions specified in said section 1 an employer is deprived of the common law defenses of assumed risk, contributory negligence, and that the injury or death was caused, in whole or in part, by the negligence of a fellow-servant. To deprive an employer, under such circumstances, of the right to assert those defenses, is not an exercise of the police power, but is merely a declaration by the legislature of the public policy of the state in that regard. The right of the legislature to abolish those de-

fenses cannot be seriously questioned. The rules of law relating to the defenses of contributory negligence, assumption of risk and the effect of negligence of a fellow-servant were established by the courts and not by our constitution, and the legislature may modify them or abolish them entirely if it sees fit to do so. *Borgnis v Falk*; Opinion of Justices; *State v Creamer, supra*; *Mondon v New York, New Haven and Hartford Railroad Co.*, 223 U. S. 1.

"The classification made by section 2 of the Act is not questioned or attacked in any way, but appellant seems to rely upon sections 21 and 22 as constituting class legislation.

"The classification in section 2 seems to be a perfectly valid and reasonable one. If it is valid and reasonable there appears no ground upon which to challenge the validity of sections 21 and 22. These sections merely limit an 'employee' as the term is used in that Act, to include any one who may be occupying a mere clerical position of carrying on any employment or enterprise enumerated in section 2. These sections are meant to exclude and one who may be occupying a mere clerical position and whose work is such that he is not subject to any of the hazards of the general business in which the employer is engaged. This is a proper and reasonable classification and does not violate any inhibition of our constitution.

"It is contented that section 3 makes an improper classification, in that it deprives the employee of his common law remedies, while the employer is permitted to retain them. This is clearly a misapprehension, as the proviso in that section enlarges the remedy of the employee and correspondingly restricts that of the employer. By this proviso, in case an employee receives an injury as the result of the intentional omission of the employer to comply with statutory safety requirements, the employer, although having elected to come within the provisions of

the Act, cannot avail himself of anything in the Act to affect his liability under such circumstances.

“The other objections urged may all be answered by the statement that *the Act is elective and not compulsory*. Were the Act deprived of its elective feature and made compulsory upon every employer and employee engaged in the enterprises enumerated in section 2 very different and more serious questions would be presented. Being elective, the Act does not become effective as to any employer or employee unless such employer or employee chooses to come within its provisions.

“Having once elected to come within the provisions of the Act, so long as such election remains in force, the Act is effective as to the party or parties making the election, and in case an employer or employee both elect to come within the provisions of the Act, *the Act itself then becomes a part of the contract of employment and can be enforced as between the parties as such*.

“Under this view, it can not be said that by this Act *judicial power is delegated* to boards of arbitrators contrary to the provisions of our constitution.

“Parties to a contract may make valid and binding agreements to submit questions in dispute or any disagreement that may arise to a board of arbitrators composed of persons or tribunals other than the regularly organized courts, and such agreements will be enforced. *Pacand v Waite*, 218 Ill. 138. By electing to accept the provisions of this Act, the employer and employee thereby agree to settle by arbitration any dispute that may arise between them in reference to compensation for injury.

“While the right to trial by jury is guaranteed under our constitution, it is a right that any one may waive if he shall see fit, and by electing to come within the provisions of the law an employer or employee elects, in the first instance, *to submit any dispute that may arise to a board of arbitrators without the intervention of any court or jury*.

“It will be observed that the Act does not make the finding and award of the board of arbitrators selected under its provisions final. Either party feeling aggrieved at the award has the *right to appeal to a court* of record, where the matter is heard ‘*de novo*,’ and where either party has the right to demand a trial by jury.

“It will thus be seen that even though the employee should elect to come within the provisions of the Act he is not wholly deprived of a trial by jury.

“It is contended that *section 9* also deprives the employee of his liberty and property; that *section 10* violates the inhibition against unreasonable search and seizures; and that *sections 11 and 13* deprive the employer of his right to contract and of his natural right of waiver.

“These contentions are fully answered by the statement that the employee is not compelled to submit to the provisions of the Act, but has the power to elect whether or not he will come within its terms and be bound by them. If any of the provisions of the Act are objectionable to him he is not required to subject himself to the Act. If he does elect to do so he can not be heard to complain that the contract he has voluntarily entered into is an unsatisfactory one.

“*The Act is not subject to the objections urged, and the judgment of the Circuit Court is accordingly affirmed.*”

(Decision unanimous.)

Louis Crooks v Tazewell Coal Company
263 Ill. Sup. 343.

April 23, 1914.

MR. JUSTICE CARTER delivered the opinion of the court.

“This was an action on the case in the Circuit Court of Tazewell county by Louis Crooks, the appellee, against the Tazewell Coal Company, appellant, to recover damages for an injury claimed to have been sustained by him on May 28, 1912, while in the employ of appellant in its

coal mine near the city of Pekin in said county. The declaration consists of two counts. The first count alleges the use and operation of the mine by appellant; its equipment; the employment of appellee and appellant's duty to furnish him with a safe place in which to work; the failure to furnish and provide such a place, and that by reason thereof appellee, while in the exercise of due care for his own safety, was injured, etc. The second count is the same as the first, with the further allegation that the appellant knew of the dangerous and unsafe condition and promised to remove the same, and that the appellee, relying upon such promise, continued in the employ of the appellant. The specific negligence charged was the failure of appellant to construct a certain entry of sufficient height and width to permit the moving of cars through the same without rubbing the sides or ceiling, and in permitting the bottom of said entry to become congested and unsafe from coal and other materials scraped off the top of loaded cars hauled through and along the entry. Each of the counts also contains the allegation that appellant *elected not to come under the Act* commonly known as the Workmen's Compensation Act of 1911, in force May 1, 1912; that it had filed a notice with the State Bureau of Labor statistics of such election, and that it refuses to provide and pay compensation to its employees in accordance with the provisions of said Act for injuries accidentally suffered by them while in its employ. Appellant filed a plea of general issue to each count, and on the issue thus formed the cause proceeded to trial, resulting in a judgment in favor of the appellee for \$3,000. Appellant prayed and perfected an appeal to the Appellate Court for the Third District, which, on motion of appellee, was certified the cause to this court for the reason a constitutional question was involved.

“Numerous errors are assigned by appellant, which resolve themselves into the following contentions: (1) That the Workmen's Compensation Act of 1911, in force

May 1, 1912, is unconstitutional and void, in that it deprives appellant of its property without due process of law, and also deprives it of the equal protection of the law with all other citizens of this state; (2) that an employee who has elected to accept the provisions of that Act must bring his action under and as directed by it and is limited in his recovery to the compensation provided by that Act, and that the same cannot be recovered by him in an action on the case such as the one at bar; (3) that the jury were erroneously instructed as to the law of the case; (4) that the trial court erred in its ruling on the admission and exclusion of evidence, and (5) that the verdict of the jury is contrary to the law and the evidence and the damages awarded are excessive.

“Appellant, the Tazewell Coal Company, is a corporation engaged in the mining of coal in what is called a shaft mine, near Pekin, in Tazewell county. The main shaft is approximately one hundred and sixty feet in depth. From the bottom of this main shaft various tunnels, called entries, lead to the several rooms from which the coal is mined. These entries are about twelve feet in width and four and one-half feet high. Appellee was injured in what is known as the tenth south entry, between rooms 19 and 20 on this entry. The coal as mined at the room is loaded into cars about four feet two inches in width, eight feet in length and two feet in depth. These are hauled back and forth by mules and run on a track of two rails laid along the floor of the entry. Appellee was a mule driver, twenty-four years of age, and had twelve years' experience at driving and working in the mines. He had been in the employ of appellant four days at the time of his injury. The first two days were spent in greasing and spragging cars. On May 27, 1912, under the direction of the driver boss he went to work, along with one Hawkins, in the tenth entry, and in passing the place where he was injured he noticed that the entry was low, gob (or slate and rock refuse) piled alongside the

entry and coal on the track between the rails. The clearance at this point between the top of the car and the top of the entry was about seven inches and about seventeen inches along the sides. On the morning the plaintiff was injured, May 28, he started on the trip, following another mule driver (Hawkins) along this entry, and saw on the track and at the sides of the entry debris and lumps of coal large enough to obstruct the car wheels, and he complained to the driver boss (Ryan) about the dirty road and the low roof in the entry at this place. He also claims to have been present at a conversation between Hawkins and the mine boss (Williams), which occurred about nine o'clock on the day of his injury, in which Hawkins told Williams he wanted a shovel to clean the coal off at this place, as it was in such condition that one was liable to get hurt there or killed, and that the mine boss told them to go ahead—that he knew the place was bad and he would have it fixed just as soon as he could get time. This conversation is denied by Ryan and Williams. In making the drive the appellee stood, as was customary, with one foot on the bumper at the front of the car and the other on the chain by which the mule was hitched to the car, with his right hand on the mule and his left on the car. He commenced work that morning at 7:30 o'clock and was injured about 12:30. He was riding, at the time, on the front end of a car in a trip of three cars, and his left foot caught on a chunk of coal that had been scraped off or had dropped from a preceding car and pulled him off the car. He fell in front of the car and the car ran onto him and partially over him. He caught the butt-stick or single-tree with which the mule was hitched to the chain attached to the car and pulled himself from under the car but was knocked down again, but finally succeeded in getting upon the car and rode thereon in the same manner as before he was injured, a distance of about seven hundred feet, out to the main entry, where he was assisted to the shaft and to the surface

of the ground and to his home. The medical examination disclosed that he had a sprained left ankle and the arch of the left foot was broken—that is, the ligaments from the bones in the top of the foot were torn loose. At the time of the trial, four months after the injury, the foot was still discolored and swollen and he was unable to use it. He was confined to his bed about two weeks and subsequently walked with crutches up to the time of the trial. The doctor who attended him testified that the injury is permanent. At the time of the injury appellee was receiving \$2.84 a day for eight hours work.

“It is assigned for error that the Workmen’s Compensation Act is unconstitutional. In *Deibeikis v Link Belt Co.*, 261 Ill. 454, this court *sustained the constitutionality of the Act as a whole*, and we do not deem it necessary again to discuss that question. Our opinion in that case not having been published at the time this cause was transferred from the Appellate Court, the case is properly here. It was there pointed out as provided in the Act, that the *Act was not mandatory but elective*, and that when both the employer and employee come under the Act and subject to its provisions *the Act becomes a part of the contract of employment and enforceable between the parties as such*; that if the employer elects not to come within the provisions of the Act and files the proper notice with the State Bureau of Labor Statistics he is not subject thereto, with one exception, viz: that *he forfeits his right to interpose the common law defenses of assumed risk, fellow-servant and contributory negligence, except that the latter might be shown for the purpose of reducing the damages*; that these rules of law were established by the courts and not by the constitution and might be modified or repealed or abolished entirely by the legislature. Appellant does not attempt to point out any particular section or sections of the Act as being unconstitutional and void, and the decision in *Deibeikis v Link Belt Co.*, *supra*, is therefore *conclusive as to the constitutionality of the Act as a whole*.

“As to appellant’s second contention, we held in the Deibeikis case, *supra*, that the relation between employer and employee, when both accept the provisions of the Act, is one of contract, *of which said contract the said law is a part*, but if either elects not to come under the law, and so notifies the proper authorities, then there is no such contract. Where the employer has exercised the right of election, the employee, in seeking redress for injuries sustained, is not bound by such contractual relation and accordingly is not limited in his recovery to the compensation provided by the Act. He cannot be said to be bound by a contract that has never been made. Where both the employer and the employee have elected to come within and be bound by the provisions of the Act, then, in seeking redress under it, *the action must be brought pursuant to and in accord with its terms and provisions*, but when the employer has elected not to be bound by the Act then the parties are remitted to their action at law and are governed in all respects by the rules and principles of law applicable to such actions, *except, alone, as to the matter of assumed risk, fellow-servant and contributory negligence*. Appellant cannot insist that appellee be bound by all the provisions of a law which appellant has elected not to be bound by. There was therefore no error in permitting appellee to show that appellant had elected not to come under the Act, nor in giving the instructions on behalf of the appellee which were drawn up on the theory that the defenses of assumed risk, fellow-servant and contributory negligence were not available, except that the latter might be shown for the purpose of reducing the damages. Nor was it error to refuse the instructions of appellant which were based upon the above named defenses.

“The instructions, so far as they relate to the Act in question, were a correct exposition of the law as applicable to the facts in this case.

“The giving of certain instructions is assigned as er-

ror on the ground that they ignore the proposition that under the Workmen's Compensation Act appellee's contributory negligence should be considered as reducing damages.

"The jury were in another instruction, however, instructed that if the defendant had elected not to provide and pay the compensation to injured employees under the Workmen's Compensation Act it cannot escape liability for injuries, if any are shown by the evidence, sustained by the plaintiff *arising out of and in the course of employment*, even though they believe, from the evidence, that such injuries, if any are shown, were *proximately caused by the contributory negligence of the plaintiff*, and the jury were instructed that in such case the contributory negligence, if any is shown by the evidence, should be considered by them *in reducing the amount of damages*. The same charge was contained in other instructions. On this point the jury were correctly instructed.

"The admission of evidence complained of was simply the evidence necessary to show that appellant had rejected the provisions of the Workmen's Compensation Act, and *hence could not set up the defenses* of assumed risk, fellow-servant or contributory negligence, except that contributory negligence could be shown by way of lessening the damages. If the law is valid—and we have held that it is—then this evidence was proper. The court, on objection, refused to admit certain evidence offered on behalf of the appellant, being that of certain employees who testified as mining experts. The appellant offered to prove by these witnesses that the mine was completely and properly equipped, constructed and operated, to contradict the evidence of appellee and other witnesses as to the condition of the entry where he was injured. In a certain class of cases, expert evidence is proper to show the effect of certain conditions, but the sole question in this case was whether or not the alleged entry in question

had become obstructed with debris so that it was unsafe for the purposes of appellee's employment. Other employees of the appellant testified in its behalf, as to the actual condition of the entry at the time of the accident, but expert evidence or the opinion of witnesses as to the condition of the mine generally, or even as to the condition of the entry at the place where appellee was injured, or the probable effect of such condition, would not be competent as against the evidence of witnesses who testified as to the actual conditions, nor do we think such evidence would be material in this case.

“Appellant also contends that the verdict of the jury and the judgment are contrary to the law and evidence and that the verdict and judgment are excessive. The injury to appellee was of such a nature that it is difficult for a court and jury exactly to fix the measure of damages, and it is more difficult for a court of review to pass on a contention that such damages are excessive. The extent of appellee's injury covers a wide range of possibilities. The physician who attended him longest and who seems to have a better knowledge of the nature and extent of the injury, testified that the injury is permanent. Appellee suffered a *sprain to his ankle*, from which he had practically recovered at the time of the trial, four months after the accident. This part of the injury is unimportant in estimating the amount of the damages. As to the other injury, the *broken arch of the foot*, the evidence, except that of the physician above mentioned, is silent as to its probable or ultimate effect. It is difficult to tell whether it is an injury from which the appellee will recover in a few months or will recover the full use of his foot by the use of mechanical appliances, or whether he will be a cripple for life. In the latter event the damages would not be excessive. A motion was made for a continuance on account of the absence of a material witness, and in the affidavit for the continuance by appellant it was set out that said witness would testify, if

present, that appellee at a time after the commencement of the suit, and prior to the September term, 1913, of court while passing the home of witness was attacked by a dog, and that appellee became frightened, threw away his crutches, and ran from the dog as though he were not injured and suffering pain. The affidavit was admitted for the purpose of avoiding a continuance. This evidence is denied by appellee. Had appellant been under the terms of the Workmen's Compensation Act appellee could have recovered only about thirty per cent of the amount of the judgment had he been *totally incapacitated* for two years. In *Consolidated Coal Company v Shepard*, 220 Ill. 123, it was held that a judgment for \$2,000 recovered for an injury to the foot and ankle of a man twenty-eight years of age, which incapacitated him from working for thirty-eight days, and the use of his foot being to some extent permanently impaired, was held to be not excessive. In *Town of Cicero v Bartelme*, 212 Ill. 256, it was held that a judgment for \$3,500 for a transverse fracture of the knee-cap, producing a permanent injury, was not excessive; and in *Chicago, Rock Island and Pacific Railway Company v Steckman*, 224 Ill. 500, it was held that a judgment for \$3,000 was not excessive where the plaintiff, a laborer, received serious and painful injuries in one of his legs and where his capacity for work was reduced. Appellee, on the trial, exhibited the injured foot to the court and jury, and the evidence of one of the physicians was based, in part, on seeing the foot at the time of the trial. No evidence was offered by appellant, by physicians or otherwise, to show the nature and extent of the injury. In any court, *the amount of damages, if any, is largely a question for the jury and must be left to their sound discretion.* *Springfield Consolidated Railway Company v Hoeffner*, 175 Ill. 634.

“Such a judgment will not be set aside on appeal *unless the amount is unreasonable or plainly the result of passion or prejudice.* *North Chicago Street Railroad*

Company v Zeiger, 182 Ill. 9; *Western Underwriters' Association v Haukins*, 224 *id.* 304. On the whole, we are unable to say that the judgment was so *excessive* as to warrant a reversal for that cause.

“For the reasons given, the judgment of the Circuit Court will be affirmed.”

(Judgment Affirmed.)

Douglas Dietz v The Big Muddy Coal and Iron Company
263 Ill. 480.

April 23, 1914.

“This is an action of case, in which all of the three counts of the declaration charge common law negligence. The first and second counts are in substance the same, but the third or additional count alleges that the injury occurred in a different manner. All of the counts allege that appellant was operating a coal mine in Williamson County, on April 21, 1913, and had prior thereto elected not to provide and pay compensation to injured employees under the Statute of 1911 known as the Workmen’s Compensation Act; that appellee was on said date an employee of appellant in the capacity of a blacksmith’s helper and was working in and about the mine of appellant; that appellee had accepted all the provisions of the Workmen’s Compensation Act and was at that time bound thereby. The declaration charges in the first and second counts that appellant negligently ordered appellee to put a bolt through a certain platform which was immediately above a certain chute and by which bolt said chute was to be suspended; that appellant knew or should have known, that the place where appellee was required to stand in order to obey the said order was a dangerous place for the performance of said work; that there was no safe place where the appellee could stand while inserting said bolt, but to carry out the order he was required to stand upon the end of said chute of metal and reach with both hands above his head and stand upon

his toes without any brace to steady or support himself, and that while thus attempting to insert the said bolt, standing upon the slanting metal of the chute, he lost his balance and slipped and fell, causing the injuries complained of. Appellant filed a plea of not guilty, and a trial before a jury resulted in a verdict in favor of appellee for \$1,500, for which amount the trial court, after overruling a motion for a new trial, entered judgment.

“The constitutionality of the Workmen’s Compensation Act of 1911 being involved, the Circuit Court of Jackson county allowed an appeal, which has been duly perfected direct to this court.

“At the term at which the cause was submitted to the court an opinion was filed in *Deibeikis v Link Belt Co.*, 261 Ill. 454, in which *the constitutionality of the above Act was considered and sustained*; but since that opinion had not been published at the time this appeal was perfected the case was properly brought before this court. The questions raised by appellant as to the validity of the Act were considered and decided in that case and it is not necessary to re-state our views.

“While appellant has devoted considerable space in its brief to a discussion of the sufficiency of the evidence to sustain the averment in the declaration that appellant had elected not to comply with the Workmen’s Compensation Act, on the oral argument counsel for appellant conceded that it was not at the time of the alleged injury, and never had been, operating under said Act, so that in the disposition of the questions here involved it will be assumed as a fact that appellant had not elected to pay compensation for injuries in accordance with said Act.

“Appellant contends that if the defense of assumed risk is available to it, the circumstances of the injury complained of are such as to entitle appellant to a directed verdict in its favor, for the reason that, as a matter of law, appellee assumed the risk of injury from slipping upon the inclined metal chute upon which he was stand-

ing at the time he fell. Without reference to what view we might take of this question if the Workmen's Compensation Act were not involved, we will consider and determine the question in view of that legislation.

"Appellant contends that under the proper construction to be given to the Workmen's Compensation Act the defenses of assumed risk, fellow-servant and contributory negligence are not affected by the Act as to employers who have never elected to pay compensation in accordance with the provisions thereof.

"Its contention is that those defenses are only lost to such employers as have elected to go under and be governed by the Act and afterwards elect not to be governed by said Act, and then only as to such employees as had before that time elected to be governed by the provisions of the said Act. Appellant contends that *there is no method provided in the Statute by which the employee can elect to be governed by the Act unless the employer has previously exercised his right of election and determined to be governed by the Act. This last proposition we regard as a correct interpretation of the Act.* It was manifestly not the intention of the legislature to put it in the power of the employee to compel the employer to adopt the Act without regard to the employer's own wishes in the matter. We find no provision in the Act which confers upon the employee the right to elect to be governed by the Act in his relations to an employer who has rejected the Act. We see no reason why this should be so, although appellee has alleged in his declaration that appellant was not under the Act and that he was governed thereby. The latter part of this proposition was simply an averment of a legal impossibility. This averment, however, may be regarded as mere surplusage and of no legal consequence whatever.

"Both parties to this cause seem to be under the impression that in some way appellee must be regarded as under the Workmen's Compensation Act in order to cut

off the common law defenses above referred to. This is clearly a misapprehension of the meaning of the Act itself. A single provision of the Act is all that is necessary to be referred to to answer the contention that appellee is himself under the Act. *Section 3* of the Act provides that 'no common law or statutory right to recover damages for injuries or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who has accepted the provisions of this Act, or to any one wholly or partially dependent upon him, or legally responsible for his estate.' If this Statute means what it says, then *if appellee is under the provisions of the Act he has no standing whatever to recover damages for his injury except as provided for in said Act, either under the common law or the statute.* If the appellee is under the Act, how can he, in view of the Statute above quoted, maintain his action?

"The legislature has by language too clear for construction *taken away the common law action as to all employees who have elected to be governed by said Act. The existence or non-existence of the common law defenses depends upon the status of the employer in respect to the Act and not the status of the employee.*

"Section 1 of the Act of 1911 provides that 'if, however, any such employer shall elect not to provide and pay the compensation to any employee who has elected to accept the provisions of this Act according to the provisions of this Act, he shall not escape liability for injuries sustained by such employee, arising out of and in the course of his employment because (1) the employee assumed the risks of the employer's business; (2) the injury or death was occasioned in whole or in part by the negligence of a fellow-servant; (3) the injury or death was proximately caused by the contributory negligence if the employee,' etc. The difficulty in understanding the above provisions results from the language 'to any em-

ployee who has elected to accept the provisions of this Act. It is a difficult matter to determine the meaning the legislature intended to convey by the use of this language.

“Plainly, the legislature in passing this Act intended to provide a scheme by which the class of employers within its provisions should pay compensation for injuries received by employees without reference to the manner in which the injury was received. The value of the legislation would necessarily depend upon the extent to which employers elected to operate thereunder, and as an inducement to employers to be governed by said Act *those within its provisions who rejected the same forfeited the right to the enumerated defenses, and these defenses are lost without regard to the status of the employee.* Any other construction would lead to an absurd result as the employee can not be under the Act while his employer is not under it. It is therefore necessary that the employer should have elected to be governed by the Act before the employee can avail himself of its benefits.

Still it is said the common law defenses are only lost to employers not under the Act in favor of employees who are under it. The result of this reasoning would be that the common law defenses would not be lost to the employer in any case, unless we take the view suggested by appellant that they are lost in those rare and exceptional cases where the employer has been under the Act and elected to abandon it, that his abandonment of the Act would not take the then employees out from the provisions of the Act, and in that case, if any such case ever happened, the common law defenses would be lost.

“But it must not be overlooked in this connection, if we suppose that to be the meaning of the law, that the common law defenses are only lost by the employer in favor of an employee who, by being under the Act, has lost his right to bring a common law action under section 3. It was manifestly the intention of the legislature to

make the Act applicable to all the employers within the enumerated employments, unless and until notice in writing of their election to the contrary is filed with the State Bureau of Labor Statistics. All of the employees to whom the Act applied were likewise automatically made subject to the law. Both the employer and the employee in the specified employments became subject to the Act without any affirmative action on their part.

“The elective feature of the Act is to be exercised to avoid being governed thereby, and not to cause the Act to be applied in any given case. *Section 1* provides that if the employer shall elect not to provide and pay the compensation provided by the Act he shall lose his common law defenses. It will be noted that it is a negative election, and not an affirmative election that is to be exercised both by the employer and employee. When the entire scope of the legislation is considered it is manifest that the legislature intended that the Act should be effective as to all employers in the specified employments, and their employees unless the notice prescribed was given. If we assume the law to be in force as against an employer and his employees at the time the Act took effect, then the language in *section 1* under consideration will be better understood.

“If the phrase, ‘any employee who has elected to accept the provisions of this Act,’ be read by interpolating two negatives the meaning will be clear. The phrase would then read, ‘Any employee who has not elected to not accept the provisions of this Act.’ The language as it stands in the Act seems to imply that some affirmative act was necessary on the part of the employee to bring him within its provisions, and herein lies the difficulty of construing the Act.

“In thus construing this Act we are not going beyond the latitude allowed courts in the construction of involved clauses, where it is necessary to interpolate words or clauses or strike out redundant and unnecessary language

in order to give effect to the general legislative intent as the same appears from a consideration of the whole scope of the act. It is always necessary, first, to understand the subject of an act and the object to be accomplished by it. Once the subject matter is clearly ascertained and the general legislative purpose discovered, a key is thereby furnished which will enable one to correctly interpret all of the constituent and subordinate elements found in the act. Words may be modified, altered, or supplied so as to obviate any repugnancy with the general legislative intention. (Sutherland on Stat. Const. sec 347, and cases there cited.)

“Lust, in his comment on the Workmen’s Compensation Law of Illinois, published in 1912, points out that the suggestion that (as there is in the Act no provision by which employees, without the prior affirmative act of the employer, can accept the Act) even if the employer should file a notice that he elected not to provide and pay compensation he would not be deprived of his common law defenses, was first raised by William Duff Haynie in a letter addressed to the Illinois Manufacturers’ Association, but Mr. Lust does not lend his approval to that view. (See Lust’s Workmen’s Compensation Law, 7, 8.)

“It necessarily follows from the views we have expressed that *appellant can not rely on the defense that the injury complained of resulted from a risk assumed by appellee*. There is no contention here that the injury was the result of the negligence of a fellow servant, and even if there were, it would not be availing.

“Appellant also makes the point that the court erroneously permitted the fact to go to the jury that appellant was a poor man and had a family dependent upon him for support. This information came out in the following manner: When appellee was on the stand he testified to the nature and extent of his injuries and the time when he became able to return to work. On cross-examination appellant’s counsel asked appellee if he did not, as a mat-

ter of fact, go to work at a date prior to the time when he stated that he was able to work, and in answer to this inquiry appellee said that he did, in fact, go to work before he was well, and explained, in substance, that his reason for doing so was that he was without any means to support his wife and children and for that reason had to go to work. We think that the testimony was proper to explain the apparent inconsistency in appellee's statement that he was not able to go to work and yet did in fact commence work.

"Appellant has urged some other objections in relation to the proof offered tending to show that appellant had given notice that it would not be governed by the Workmen's Compensation Act. These objections are, however, of no importance in view of the admissions of appellant, on oral argument, that it was not, and never had been, operating under said Act.

"Appellant's main contention on the merits of this controversy are that the Act of 1911 is unconstitutional. This contention has been fully answered by this court in *Deibeikis v Link Belt Co.*, *supra*.

"It is also contended that if said Act is constitutional it should be so construed as not to deprive appellant of its common law defenses. This contention has had the consideration which we think its importance demands, with the result that we cannot accept appellant's view as to the proper interpretation of the Act in question.

"Substantially all of the other points appellant has urged in its able and exhaustive brief are related to and result from the insistence of appellant upon its two principal contentions. There are some other minor matters suggested and urged by appellant as reasons why the judgment below should be reversed, and these have all had our consideration, and we find none of them of sufficient importance to justify an extension of this opinion to discuss them. The judgment of the Circuit Court of Jackson county is affirmed." (Judgment Affirmed.)

Amanda E. Courter v The Simpson Construction Co.**264 Ill. Sup. 488.**

MR. JUSTICE FARMER delivered the opinion of the court.

“This case comes to this court for review upon a writ of *certiorari* under the Workmen’s Compensation Act of 1913.

“George B. Courter, a carpenter, was employed by and began work for the Simpson Construction Company on July 22, 1913, on a *building in course of construction* at No. 3921 Michigan Avenue, in the city of Chicago. On July 23 he was injured by stepping on a *rusty nail* and died from *lock-jaw* resulting from the injury July 30. Courter left *surviving him a wife, from whom he was divorced, and a son* seventeen or eighteen years old. *They filed a statement of the accident to and the death of George B. Courter with the Industrial Board of Illinois* and requested such action be taken as the law authorized. The widow and the Simpson Construction Company were each *notified by the Board to appoint a representative on a committee of arbitration* within seven days, which they did, and the persons so appointed, together with a person *designated by the Board*, heard the case as a *committee of arbitration*. Said committee of arbitration decided the widow, as guardian of the minor son, was entitled to recover of the company \$8.41 per week for a period of two hundred and eight weeks from July 23, 1913. The decision was filed with the *Industrial Board*, and upon notice of its having been filed being given, the applicant, Amanda E. Courter, guardian, filed a *petition for review*. Thereafter, proper notice having been given, the matter was heard by the *Industrial Board* and a decision rendered and filed, finding that \$8.41 per week was *one-half of the amount of the weekly wages* of George B. Courter while employed by the Simpson Construction Company; that the widow was the guardian of the person of the surviving son, and was entitled to receive from said Simpson Construction Company \$8.41 per week for

a period of *four hundred and sixteen weeks* from July 23, 1913; that the guardian was entitled to receive the money until the ward became of age, after which he was entitled to receive it. To *review the decision of the Industrial Board* the Simpson Construction Company sued out a *writ of certiorari* under the provisions of the Workmens' Compensation Act of 1913.

"The Workmen's Compensation Act provides for the payment by employers who elect to accept the provisions of the Act, of compensation for accidental injuries to employees *arising out of and in the course of their employment*, such compensation to relieve the employer from liability for the recovery of damages except such as provided in the Act. *Section 7* fixes the *maximum compensation* for an injury resulting in the death of an employee leaving a widow, child or children whom he was under *legal obligation to support* at the time of his injury, at \$3,500.

"By *Section 13* a board is created of three members, to be appointed by the governor, known as an *Industrial Board*, which is given *jurisdiction over the operation and administration of the Act; and all questions arising under said Act, if not settled by agreement of the parties interested, shall, except as otherwise provided therein, be determined by the Industrial Board.*

The Act makes it the duty of said Board, upon notice that the parties have failed to agree, to notify the parties to each appoint a representative on a *committee of arbitration*. The Board shall designate one of its members, or an agent appointed by it, to act as chairman. The committee of arbitration shall hear and decide the controversy and file its decision with the Industrial Board, which Board is required immediately to send each party a copy of the decision, together with notice of the time when it was filed.

"A *petition for review* may be filed by either of the parties with the *Industrial Board* within fifteen days

after receipt of a copy of the decision and notice when it was filed, unless further time is given by the Board, and the party petitioning for review is required, within twenty days from the filing of the decision, to file with the Board either *an agreed statement of the facts* appearing upon the hearing before the committee of arbitration or a *correct stenographic report* of the proceedings at such hearing.

“When, on a petition for review, an agreed statement of facts or correct stenographic report is filed with the *Industrial Board*, said Board shall review the decision of the committee of arbitration. Said Board is required to announce and file in its office the decision and immediately send each party a copy of it, together with notice of the time when it was filed.

“*Clause (f) of section 19 of the Act* reads as follows:
* * * It is under this clause of the Statute the writ of certiorari was issued.

“The sole ground upon which the writ is sought to be sustained are, that there was no evidence to support the findings of the *Industrial Board* that Courter came to his death as the result of an accidental injury which arose *out of and in the course of his employment*, and that the award was excessive.

“The guardian of the ward, in whose favor the award was made, challenges the constitutionality of this provision of the Act, authorizing the Supreme Court to issue a writ of certiorari for a review of the decision of the *Industrial Board*. The basis of this contention is that the Statute purports to confer original jurisdiction upon this court to issue a writ of certiorari in violation of section 2 of article 6 of the Constitution, which expressly limits the original jurisdiction of this court to cases relating to the revenue, mandamus and habeas corpus. We are of the opinion that this objection to the validity of *that part of the Act which authorizes this court to issue*

a certiorari to review the decisions of the Industrial Board must be sustained.

“We might well limit this decision to a determination of that question, alone, but for reasons so obvious as not to require specification *it is of great public importance that questions of procedure under the Act shall be settled and understood as early as possible*, and we think that we may without propriety express our views not only upon the specific question raised but also upon questions of procedure which though not primarily necessary to a determination of the specific question, as so nearly related to and connected with it that they may be passed upon in this connection. If we were to decide merely that the provisions of the Act authorizing a review of the decisions of the Board by writ of certiorari issued out of this court is invalid, it might involve other provisions, or possibly the whole Act, in uncertainty, because it would then contain no express provision for a court review of the decisions of the Board.

“As many as twenty-two states of the union have adopted Workmen’s Compensation Acts. The basic principles of all of them are the same but they are by no means similar in the methods provided for administering the Act. In most of the states the Act makes some provision for a court review of the decisions of the Board, though their provisions in this respect are very dissimilar, and in a few states no express provision is made for a court review of the action of the Board. * * *

“*Paragraph (g) of section 19* authorizes either party, where no proceedings are had for a review of the decisions of the Board, to present a certified copy of the decision to the *Circuit Court* of the county where the accident occurred, and thereupon such court shall render *judgment* in accordance therewith.

“The Circuit Court rendering the judgment is given power at any time, upon application for that purpose, to make the judgment conform ‘to any modification required

by any subsequent decision of the Supreme Court on appeal, or as the result of any subsequent proceedings for review as provided in this Act,' but no provision is made for the review of the judgment of the Circuit Court, by appeal or otherwise, by the Supreme Court. The only express provision made by the Act for a review of the decisions of the *Industrial Board* is *paragraph (f) of section 19*. That paragraph purports to authorize the Supreme Court to review questions of law involved in the decisions of the Board 'by certiorari, mandamus or by any other method permissible under the rules and practice of said court or the laws of this state.' As the writ of certiorari is not issued in aid of or to protect our appellate jurisdiction, and *as this court has no original jurisdiction in certiorari, and as jurisdiction in such cases cannot be conferred by an Act of the legislature, the provision of the Act authorizing the review of the decisions of the Industrial Board upon a writ of certiorari issued by this court for that purpose is invalid.*

"We might rest our decision here were it not for the importance of an early determination whether the parties to an award under the Act may have *a review of the decisions of the Board to the extent of determining whether the Board had acted illegally or without jurisdiction. To deny a court review of those questions would violate the due process of law provision of the Constitution.* Where the parties voluntarily elect to come within and be governed by the provisions of the Act, it may be well they *waive any constitutional right to trial by jury, and the action of the Board, 'within its powers, in the absence of fraud, be conclusive.'* The *Industrial Board* has no jurisdiction to apply the Act to persons or corporations who are not subject to its provisions nor to an accident not within the provisions of the Act. If it did so it would not be 'acting within its powers' and it would seem essential that there must be some remedy for a review by some proper court of the question whether the Board

acted within its powers. No valid provision having been made in the Act for such a review, it does not follow that none can be had.

“*We have no doubt the Circuit Courts have jurisdiction to issue the common law writ of certiorari to review the decisions of the Board for the purpose of determining whether it had jurisdiction or whether it had exceeded its powers and acted illegally* (citations). It may also be that when application is made to the Circuit Court to have judgment entered on the award that the court would have power to inquire whether the Board acted within its powers, but whether it would or not, this question may be reviewed by the Circuit Courts by the common law writ of certiorari.

“Legislation of this character is of recent development. The provisions if the Acts of the states having adopted such legislation upon the questions here under consideration are very dissimilar and we have been unable to find much help from adjudicated cases in other jurisdictions. The case most in point is a Wisconsin case. The Wisconsin Act is in many respects similar to the Illinois Act, but the method for review of the decisions of the Board is not the same. The constitutionality of the Wisconsin Act was passed upon and sustained by the Supreme Court of that state in *Borgnis v Falk Co.*, 147 Wis. 327.

“The Wisconsin Act provides that the finding of facts made by the Board, ‘acting within its powers,’ shall, in the absence of fraud, be conclusive and shall only be reviewed in the manner herein provided, which, in brief, is by the party aggrieved commencing an action for that purpose in the Circuit Court of Dave county within twenty days from the date of the award. Said court was given power, on the hearing, to confirm or set aside the award, but it was only authorized to set it aside where the Board had acted without or in excess of its power, where the award was procured by fraud, and where the findings of

fact by the Board did not support the award. Appeals from judgments were allowed to the Supreme Court in the manner provided for appeals in other cases from judgments of the Circuit Courts. The court passed upon the objections that the Act vested judicial power in a body which was not a court and that it violated the constitutional guaranty of due process of law, and held the Board (or industrial commission as it is called in the Wisconsin Act), was not a court; that it was an administrative body or arm of the government, empowered, in the administration of the law, to ascertain some facts and apply the existing law thereto, in doing which it acted quasi-judicially but was not vested with judicial power in a constitutional sense. It was further held that the decision of such a Board may lawfully be made conclusive when it is acting within its jurisdiction; that the Board could not conclusively determine its own jurisdiction, but that question is open for review by the courts, and if the law provides no appeal from the decisions of the Board, the questions whether it had acted within or had exceeded its jurisdiction are open to examination by and decision of the proper court by writ of certiorari.

“The Simpson Construction Company contend that the decision in *People v Superior Court*, 234 Ill. 186, that this court can only issue a writ of certiorari as auxiliary to or in aid of, or to protect, its appellate jurisdiction is no longer the law since the amendment of 1909 to the Practice Act, authorizing a review of decisions of the Appellate Court by writ of certiorari issued out of this court. Previous to the amendment of 1909 appellate jurisdiction to review judgments of the Appellate Court had been provided for by legislative enactment. In fact, provision for such review by this court was made by the legislature upon the establishment of the Appellate Court, and that jurisdiction has been exercised continuously since that time. The amendment of 1909 did not take from the Supreme Court its jurisdiction to review

judgments of the Appellate Court, but changed the method of review by appeals and writs of error to writs of certiorari. No new jurisdiction was conferred upon the court, but the method of exercising its appellate jurisdiction, in cases where such jurisdiction had been conferred by law, was changed. The 1909 amendment was merely a change in practice, providing for the writ of certiorari in aid of or as the means by which the court's appellate jurisdiction should be exercised. The Act provided that in cases brought to this court by certiorari the court shall have the same power and authority to review the case and with like effect, as if it had been carried up by appeal or writ of error. In the case now before us appellate jurisdiction is not given this court, or any other court, to review the decisions of the *Industrial Board*, and *it can only be reviewed by a court having jurisdiction to issue the common law writ of certiorari, and in this state only Circuit Courts have such jurisdiction.*

"Our conclusion is that this court has no jurisdiction to entertain this case, and the writ is therefore dismissed."

(Writ Dismissed.)

Frank Uphoff v The Industrial Board of Illinois
271 Ill. Sup. 312.

Feb. 2, 1916.

MR. JUSTICE CARTER delivered the opinion of the court.

"In August, 1913, plaintiff in error, Frank Uphoff, employed the defendant in error, B. C. Bruner, *to help build a broom-corn shed on Uphoff's farm, near Mattoon, Illinois.*

"While Bruner was working on this structure, *a piece of metal flew from the hammer he was using and struck his eye, destroying its sight.*

"He filed a *petition with the Industrial Board of Illinois* asking that damages be awarded him for the loss of his eye under the Workmen's Compensation Act of 1913. The arbitration committee appointed by the *Industrial*

Board under that Act awarded him \$1442, for his injury, and this award was affirmed by the majority of the *Industrial Board*. Uphoff thereafter filed a *petition in the Superior Court* of Cook county for a *writ of certiorari*. Under that writ *the proceedings of the Industrial Board were reviewed* and an order entered sustaining said proceedings. This *writ of error* was then sued out. Counsel for plaintiff in error contend that the *Industrial Board* was without *jurisdiction* as to an injury of the character of the one here in question. The evidence shows that Uphoff had been engaged in farming for the past eighteen years; that Bruner had worked as a *carpenter* for about thirty years; that the building that he was working on was a broom-corn shed, 32 by 24 feet and 17½ feet high, requiring for its construction the services of four men for about ten days. Bruner had been employed by Uphoff for no certain time but apparently to continue the work until the building was constructed. The accident happened during the seventh day of his employment. He received thirty cents an hour and was expected only to do carpenter work. He had never worked for Uphoff before.

“*Section 1 of the Workmen’s Compensation Act* provides that any employer may *elect* to provide and pay compensation for accidental injuries sustained by employees *arising in the course of employment* and thereby release himself from all other liability.

“It is conceded here that plaintiff had *given no notice* to the *Industrial Board* of his acceptance of the provisions of said Act. He therefore cannot be held liable thereunder unless it can be shown that he is one of *the class of employers who are held liable under the Act even though they have elected to come under it*. While the *entire Act must be read in order to understand its intent and meaning*, certain sections must be particularly construed in order to reach a proper conclusion in this case.

“*Paragraph (b) of section 3 of said Act reads: * * **

“Section 4 defines what shall be understood by the term ‘employer’ in said Act. There is nothing in said section which will throw especial light on the question here involved. If that section were construed alone, Uphoff might be considered an employer coming within the provisions of said Act. Section 5 provides that ‘the term “employee” as used in the Act shall be construed to mean * * * Second—Every person in the service of another under any contract of hire, express or implied, oral or written * * * but not including any person whose employment is but casual or who is not engaged in the usual course of the trade, business, profession or occupation of his employer.’

“The intention of the law-maker is the law. *This intention is to be gathered from the necessity or reason of the enactment and the meaning of the words, enlarged or restricted according to their real intent.* In construing a statute the courts are not confined to the literal meaning of the words. A thing within the intention is regarded within the statute though not within the letter. A thing within the letter is not within the statute if not also within the intention. When the intention can be collected from the statute, words may be modified or altered so as to obviate all inconsistency with such intention. (*Hoyne v Danisch*, 264 Ill. 467.) When great inconvenience or absurd consequences will result from a particular construction that construction should be avoided, unless the meaning of the legislature be so plain and manifest that avoidance is impossible. (*People v Wren*, 4 Scam. 269.) The courts are bound to presume that absurd consequences leading to great injustice were not contemplated by the legislature, and *a construction should be adopted that it may be reasonable to, presume was contemplated.* (2 Lewis Sutherland on Stat. Const. § 489; *People v City of Chicago*, 152 Ill. 546; *Canal Comrs. v Sanitary District*, 184 *id.* 597.) *A statute is passed as a whole and not in parts or sections; hence each part or section should be*

construed in connection with every other part or section. In order to get the real intention of the legislature, attention must not be confined to the one section to be construed. *Warner v King*, 267 Ill. 82, and cited cases.

“Numerous authorities from other jurisdictions, construing Workmen’s Compensation Acts, have been cited and frequent references have been made to Acts in other jurisdictions. Both counsel have cited authorities which, it is argued, support the conclusion contended for. The wording of our Statute is so different on the question here under consideration that the *other acts or decisions could have very little weight as to the proper construction* to be here given and further reference to them is unnecessary.

“Manifestly, from the reading of the above quoted sections of the Act, some employers were not intended to be included in the Act unless they elected to be so. Clearly, under the quoted sections, read in connection with the remainder of the Act, farm laborers, engaged in general farming would not be covered by the Act unless the farmer elected to accept the Act under the provisions of *section 1*.

“It is contended by counsel for defendants in error that plaintiff in error must be held to come under the provisions of the Act under *Subdivision 1 of paragraph (b) of Section 3*, as the broom-corn shed would be included in the provisions of that section in the building ‘*of any structure.*’ This could only be true if it were held that in so building such broom-corn shed the farmer was engaged in an occupation, enterprise or business and was *engaged in the usual course of his ‘trade, business, profession or occupation,’ and that the employment was not casual.* It is also plain that the legislature only intended to include under *paragraph (b)* any such occupations, enterprises or businesses of the employer when they were properly considered to be ‘*extra-hazardous.*’ It is true that the clause in *subdivision 8 of said para-*

graph (b) calling all of these trades, businesses, enterprises or occupations extra-hazardous was inserted for the purpose of *making clear what was considered extra-hazardous*, but it is also clear that *the legislature did not intend to include work that everyone knows is not extra-hazardous or even hazardous*.

“It is not seriously contended by counsel that the mere building of this crib could be properly classed as the *business or occupation* of plaintiff in error, but it is earnestly urged that it could properly be considered under the term ‘*enterprise*.’ An enterprise is ‘an undertaking of hazard; an arduous attempt.’ (15 Cyc. 1053, and cited cases.) Lexicographers define an enterprise as ‘an undertaking; something projected and attempted; an attempt or project, particularly an undertaking of some importance or one requiring boldness, energy or perseverance; an arduous or hazardous attempt, as, a warlike enterprise.’ The building of this shed might be classed under the head of something projected or attempted, but hardly as an important undertaking requiring courage or energy or one that was arduous or hazardous. To say that the word ‘enterprise’ covered the building of any structure, however small, would lead, in some instances, to absurd consequences. A chicken coop or dog kennel ten feet square and four or five feet high would be a ‘structure’ in a technical sense of the term, but it would hardly be contended that such a structure was within the meaning of this Act, according to the intent of the legislature. ‘*Carriage by land*,’ under *subdivision 3 of said paragraph (b)*, in the strict, literal meaning of the term might require that it include the hauling of grain by team and wagon from the farm to the elevator. Surely that was not within the legislative intention. The word ‘*excavating*,’ under *subdivision 2 of said paragraph (b)*, might cover, technically, the digging of a post-hole on a farm, but it was certainly never so intended. It is plain from the use of the word ‘enterprise’ in other subdivi-

sions of said paragraph (b) that it *was intended to mean a work of some importance that might properly be considered arduous or hazardous*. The building of this sort of a structure was hardly more hazardous than the building of a dog kennel or chicken coop or the building of an ordinary board fence for the farm. From any fair construction of the Act the legislature never intended to call working on every farm structure, no matter how small, as extra-hazardous.

“In the oral argument of this case it was suggested that in 1915 the legislature *amended* the Workmen’s Compensation Act so as to make it absolutely clear that *none of the employees of farmers should be included in the Act* unless the farmer so elected. Each counsel argued that the fact that the legislature so amended the original Act tended to support the construction contended for by him as to the original Act. We do not think any fair argument can be drawn from this amendment in support of either construction contended for, and nothing we have said here is intended to have any bearing on the construction that should be given to the Act thus amended.

“Counsel for defendant in error Bruner contend that the decision of the *Industrial Board* under this Statute is decisive of this question and cannot be inquired into by the courts. This contention cannot be supported. *The decision of the Industrial Board is only binding when it is acting within its powers*. This court said in *Courter v Simpson Construction Co.*, 264 Ill. 488, that ‘*the Industrial Board has no jurisdiction to apply the Act to persons or corporations who are not subject to its provisions nor to an accident not within the provisions of the Act,*’ and that if it did so the remedy was in the courts. (See also, to the same effect, *Borgnis v Falk Co.*, 147 Wis. 327.) In view of what we have already said, it is clear that the *Industrial Board was without jurisdiction* in the matter.

“The judgment of the Superior Court is reversed and the cause remanded, with directions to set aside and hold for naught the finding of the *Industrial Board*.”

(Reversed and Remanded with directions.)

Dragovich, Administrator v The Iroquois Iron Co.
269 Ill. Sup. 479.

October, 1915.

MR. JUSTICE CARTER delivered the opinion of the court.

“This was a proceeding to recover compensation under the Workmen’s Compensation Act of 1911, for the death of Frank M. Markusic. The case was tried in the Circuit Court of Cook county on an *appeal from a report or reward of the board of arbitrators*, rendered in accordance with Section 10 of said Compensation Act. On the *trial in the Circuit Court*, a judgment for \$3,500 was entered in favor of appellee, payable in installments, in accordance with the terms of the statute. From that judgment this appeal was taken direct to this court on the ground that said Workmen’s Compensation Act is unconstitutional.

“On a hearing in the Circuit Court the journals of the House and the Senate were introduced, and it is argued from them that it does not appear that twenty-three amendments to said bill were printed before the final passage of the bill. The Senate journal shows that the bill was introduced, amended and passed. The House journal shows that the bill was received from the Senate and having been printed and read the first time was referred to a committee; that the committee afterwards reported the bill back with *twenty-three amendments*, with a recommendation that the amendments be adopted and that the bill as amended do pass. Thereafter the bill was ordered to a second reading, and upon such reading the committee’s amendments were offered and adopted. The journal proceeds: ‘There being no further amend-

ments, the foregoing amendments, numbered 1 to 23 inclusive, were ordered printed and engrossed.' The bill was then ordered to a third reading. The committee on enrolled and engrossed bills reported that the House amendments had been correctly engrossed, and later the record shows that the bill was taken up, read at large a third time and passed by a vote of 98 yeas to 2 nays.

"The Senate journal shows that two days later the bill was taken up in the Senate and the question then being, 'shall the Senate concur with the House of Representatives in the adoption of the following amendments (1 to 23) to the bill?' and the yeas and nays being taken, it was decided in the affirmative by a vote of 35 yeas, nays 1.

"Counsel for appellant argues that under the rulings of this court in *Neiberger v McCullough*, 253 Ill. Sup. 312, and *McAuliffe v O'Connell*, 258 *id.* 186, this law, on account of the minutes of the journal, must be held unconstitutional; that it is necessary, in order to hold it constitutional, to find in the journal affirmative evidence that the amendments were actually printed before the final vote. * * *

"We have repeatedly held that where the constitutionality of a law is involved, every presumption must be indulged and every reasonable doubt resolved in favor of its validity. It is a familiar doctrine of this court that laws will not be declared unconstitutional unless it is clearly proved beyond a reasonable doubt that the requirements of the organic law have not been observed. (*People v Brady*, 268 Ill. Sup. 578, and cases cited; *People v Henning Co.*, 260 *id.* 554; *Home Ins. Co. v Swigert*, 104 *id.* 653.) This same rule applies to the constitutionality of a law when any defect is claimed in its passage. * * *

"The constitution does not require that the legislative journal shall show affirmatively that the bill or its amendments have been printed. * * *

"The journal shows that the amendments were or-

dered printed. Nothing appears on the journal to indicate that the order was not complied with, and it must be presumed, under this rule, that these amendments were actually printed before the final passage of the bill. Not only did the journal show that these amendments were ordered printed, but the rules of both the Senate and the House required that all amendments should be printed before being passed. By an unbroken line of decisions this court has held that the presumption must be that a public officer has pursued the course pointed out by law and has performed his duty, until the contrary is shown. * * * *The law must therefore be held constitutional.*

“Counsel for appellant further argues that even though the law be held constitutional, appellee could not recover under the Compensation Act as the record does not show that he was injured *while in the course of his employment* by the appellant.

“The evidence shows that the deceased, Markusic, had been in the employ of appellant, The Iroquois Iron Company, for a number of years, doing different kinds of work about appellant’s plant, sometimes in the buildings and sometimes on the dock. On December 24, 1912, he was working in the shop of appellant, assisting in making some safety appliances. Max Gornick, with two or three other men, was working in the same shop, repairing steam engines under the floor, and for this purpose some of the steel plates forming the floor had been taken up, thereby leaving an opening or hole, in which was accumulated a quantity of hot water from which were escaping vapor and steam, making it impossible for a person approaching the opening from where Markusic, deceased, was working, to see the hole. Gornick, while engaged in this work, slipped and fell into the opening and into the hot water and screamed for help, crying out in Croatian, which was the native language of Markusic—‘For good God! pull me out, people! pull me out!’ At

this cry, the testimony is, Markusic dropped his work and ran toward the place from which the cry came. The steam and vapor coming from the water so obscured the opening that he fell into the hole and was so badly scalded that he died from the effects two days later. Gornick was being assisted out by others just as Markusic fell in. The distance from where deceased was working to the place where the accident occurred is estimated by witnesses to be from 100 to 150 feet. In traveling between the two points he would have to go about 50 or 75 feet south and then about 50 feet west around a boiler. The place of the accident could not be seen, apparently, from the place where deceased worked.

“Section 1 of the Act requires that compensation may be had for accidental injuries sustained by any employee ‘arising out of and in the course of the employment,’ etc. From the facts already stated, counsel for appellant argues that it was not shown that the accident arose out of and in the course of deceased’s employment.

“This provision of the Statute has never been construed by this court but somewhat similar acts have been construed by the courts in other jurisdictions. Under these authorities it is clear that *it is the duty of an employer to save the lives of his employees, if possible, when they are in danger while in his employment, and therefore it is the duty of a workman in his employ, when occasion presents itself, to do what he can to save the lives of his fellow-employees* when all are at the time working in the line of their employment. Any other rule of law would be not only inhuman but unreasonable and uneconomical, and would, in the end, result in financial loss to employers on account of injuries to their employees. From every point of view it was the duty of deceased, as a fellow employee, *in the line of his duty to his employer, to attempt to save the life of his fellow-employee under the circumstances here shown.* That he failed in his at-

tempt does not in the slightest degree change the legal situation.

“The reasoning of the following cases tends to support this conclusion: *Rees v Thomas*, 1-4, W. C. C. C. 9; *Matthews v Bedworth*, 1 *id.* 124; *London & Edinburgh Shipping Co. v Brown*, 42 Scottish L. R. 357.

“Counsel insist that there is no proof in the record that Gornick, the man who first fell into the hot water, was working in the line of his employment at the time of the accident. *The burden of furnishing evidence from which the inference can be legitimately drawn that the death of the employee was caused by an accident ‘arising out of and in the course of the employment,’ rested upon the claimant.* *Bryant v Fissell*, 86 Atl. Rep. (N. J.) 458. We think the evidence clearly shows that Gornick was at work in the line of his employment at the time he fell into the opening, and that on principle and authority, under the circumstances shown here, it must be held that the deceased, Markusic, was working *in the line of his employment, under this Statute*, at the time he was injured.

“Counsel for appellant further insists that the verdict of the jury was not sufficient to sustain the judgment. The verdict read: ‘We the jury find the issues in favor of the petitioner and that he is entitled to recover compensation.’ Counsel argues that the jury should have found the amount of compensation and from whom the administrator was entitled to recover. With this we do not agree. It is quite customary for verdicts, even in common law cases, to recite, ‘We, the jury, find the issues in favor of the plaintiff,’ etc., without stating that the recovery shall be against the defendant. We see no reason why it was necessary in this case for the jury to state against whom the verdict was rendered. There was only one defendant, and if the petitioner was to receive compensation at all it must be from the defendant.

“Section 4 of this Statute provides that if the employee leaves a widow, child or children to whose sup-

port he had contributed within five years previous to his death, the compensation shall be 'a sum equal to four times the average annual earnings of the employee,' but not less, in any event, than \$3,500. (Hurd's Stat. 1911, p. 1138.)

"The proof showed, without contradiction, that the deceased left a *widow and minor child*. It was stipulated during the trial that the average weekly wages of the deceased for more than a year prior to his death were \$19.25 and that he had *contributed* to the support of his wife and children within five years preceding his death.

"The Act provides that the matters shall be first submitted to arbitration, as was done in this case, and further provides, in *section 10*, that either party shall have the *right to appeal* from such report or award to the Circuit Court, as was done in this case, and 'upon such appeal the questions in dispute shall be heard de novo,' etc.

"There was no question in dispute as to the amount of the *annual earnings* of the deceased. From the record it is manifest that the amount that should be recovered was not in any way in dispute before the jury. The chief, if not the only, question in dispute was whether or not the administrator was entitled to recover anything for the death of the deceased.

"The stipulation fixed the annual weekly earnings; the verdict found the petitioner entitled to compensation; and the statute fixed the method; therefore, the determination of the amount was a mere mathematical operation, which was performed by the court in entering the judgment. Even in a common law action a verdict will not be reversed for mere informalities where they do not affect the merits of the case and justice has been done. *Bates v Williams*, 43 Ill. Sup. 494; *Bacon v Schepflin*, 185 *id.* 122.

"In *Hall v First Nat'l Bank*, 133 Ill. Sup. 234, in discussing a question somewhat similar, in principle, to that here, the court said (p. 243):

“ ‘The form of the verdict was, “We, the jury, find the issues for the plaintiff,” no damages being assessed by them. The reason for this appears to be that the defendants had suffered judgment to go against them by default and the court thereupon assessed the damages and rendered final judgment. On a motion by the defendants to set aside the default and for leave to plead, the court stayed proceedings on the judgment and allowed the defendants to plead, but refused to set aside the judgment, allowing it to stand as security for plaintiff until the trial of the issues presented by the pleas. If the defendants failed to establish their defense judgment was to stand. Under such circumstances the verdict of the jury was not erroneous in form or substance as the question of damages was not submitted to them.’ That case, on this point, was quoted with approval in *Dulle v Lally*, 167 Ill. Sup. 485. The reasoning in those cases fully supports the conclusion that this verdict, on the facts found in this record, was sufficient to support the judgment. It might have been proper to have made the verdict more specific, but the informalities in no way affect the merits of the case.

“We find no reversible error in the record. The judgment of the Circuit Court will be affirmed.”

Frey v Kerens-Donnewald Coal Co.

271 Ill. Sup. 121.

December, 1915.

“Plaintiff was employed during the year 1912 as a miner in the coal mine of defendant, located at Wiorden, Illinois. Both he and the coal company had *elected* to be bound by the provisions of the Workmen’s Compensation Act of 1911, in force May 1, 1912. On November 22, 1912, while engaged in mining coal in said mine, plaintiff was knocked down and injured by a mine prop. Being incapacitated for work he was paid compensation by the defendant company at the rate of \$1.42 per day up to November 15, 1913, making a sum total of \$489.88.

“He filed his petition in the county court of Madison county asking for the appointment of an arbitrator to fix the amount of compensation to be paid to him under the Workmen’s Compensation Act, which the court did. The plaintiff and the defendant each named an arbitrator and two of said arbitrators made a report finding that the plaintiff was entitled to compensation at the rate of \$12 per week for 29 2-3 weeks or a total of \$3,500, less \$489.88 paid him by the defendant.

“Defendant then filed its *petition in the Circuit Court* and asked to have the *award of the arbitrators reviewed* under the provisions of said Act. A jury was waived, and on a trial before the court November 25, 1914, the Circuit Court made the same findings as the arbitrators, that the plaintiff was *permanently injured and totally disabled*, as aforesaid, and that he was entitled to recover from the defendant for his full compensation the sum of \$3,500, less said amount paid by it, or \$3,010.12, payable at the rate of \$12 per week; that as no payment had been made by the defendant since November 15, 1913, the defendant should then pay \$636 cash, that being the sum due since said last date at \$12 per week, and that the remainder of \$2,374.12 be paid at the rate of \$12 per week, beginning with the date of the judgment. This *writ of error* is presented by the defendant to reverse the judgment.

“Only two grounds are urged by the defendant for a reversal of the judgment: (1) That there is no evidence in the record sufficient to justify the award of the compensation to the plaintiff upon the ground that he was injured while *in the course of his employment*, because his *paralysis* was not due to his said injury; (2) that said Act of 1911 was never legally passed by the General Assembly, because the bill, with its amendments, was not printed, as required by the Constitution, before its final passage in the House.

“First—The record in this case shows a stipulation

by the parties to this proceeding that plaintiff was injured while working for the defendant, in the course of his employment. Plaintiff testified that the prop in question struck him on the side of the head, midway between the top of his ear and the center of the top of his head, while he was mining coal for the defendant in its said mine, and knocked him about fifteen feet against the rib of coal; that the top of his head was affected and his *skull fractured*; that he *worked seven or eight days thereafter*, and on Sunday morning, while he was reading a newspaper, he got so he couldn't walk and his wife put him to bed; that he was taken to the hospital in Granite City, where they took out pieces of his skull and some 'bruised blood;' that the injury caused all his strength to leave him and that he can't use his right hand or his right leg, and that the right side of his body is *paralyzed*; that he then had no better use of his limbs than he had three months after the injury, and has not been able to do any work since he was paralyzed and sometimes can scarcely walk.

"It was stipulated that his average earnings for the year previous to his injury were three dollars per day.

"Drs. Bly, McBrien and Ferguson testified for plaintiff and all of them qualified as expert physicians of more than fifteen years' practice in medicine and surgery. All of them testified that plaintiff had *paralysis in the right leg and arm* and suffered from a pain in the left side of the head, where the blow was received.

"Dr. McBrien testified that he had made a careful examination of the plaintiff's head and found a dent pressure over the place, on the left side of his head, where he said he had been struck with a prop or block of wood in the mine; that he assisted in trephining his skull at the place he was hurt, took out a piece of bone and relieved the pressure, and found the bone dark and discolored but was not sure that he found a blood clot; that the operation was successful in opening up and relieving the

pressure; that he was improved some but cannot use the right side of his body much and drags it and in his condition could not perform any hard labor. He gave it as his opinion that his condition was due to an injury to the skull caused by a blow and that it is *permanent*.

“Dr. Ferguson testified that in his judgment the plaintiff’s condition was due to the injury or blow on his head. He also testified that the fact that plaintiff worked every day after the injury would increase his chances of producing a *hemorrhage in the brain* if the injury was such as to have destroyed the vessels weakened by the blow; also, that if plaintiff continued to work for eight days following that blow without being impaired from his work that might lead him to believe other causes might have acted later. Dr. Bly testified that he examined the plaintiff and thought the cause of his paralysis was due to a hemorrhage.

“The foregoing evidence amply *sustains the findings of the court*. The defendant offered no evidence to contradict the four witnesses aforesaid, and they are all the witnesses who testified on this branch of the case.

“Second—For the purpose of proving that the Workmen’s Compensation Act of 1911 was not legally passed by the General Assembly the defendant produced before the court two large volumes certified by James A. Rose, Secretary of State, to be true copies of the original journals, respectively of the Senate and House of the Forty-seventh General Assembly of Illinois. The fly-leaves and a number of pages in each of said volumes were introduced, which purported to show the introduction of Senate Bill No. 283 by Mr. Henson and various proceedings in the House and Senate, relating to the passage of the bill, which, as finally passed, is what is known as the Workmen’s Compensation Act of 1911. The entire evidence introduced by the defendant failed to make the proper proof that said bill was not printed before its final passage in the House. The presumption is in favor

of the validity of the Act, and it can only be overcome by clear and convincing proof so as to satisfy the court, beyond a reasonable doubt, of its invalidity. (*People v Joyce*, 246 Ill. 124.) To prove that a bill was not printed before its final passage by the House, not only the entire record of the bill in the journal of the House, from its introduction to its final passage, should be put in evidence, but it should also further appear from the evidence of some one who has examined the entire contents of the journal, that the pages introduced in evidence constitute the complete record of the proceedings in the House with reference to the bill. The proof in this particular was not shown to be, and does not purport to be, the complete record in the House journal with reference to the introduction and passage of the bill.

“The contention of the defendant, however, that the Act is invalid because the *House journal does not show that the bill was printed* before its final passage, cannot be sustained in any event, as *this court has passed upon that very question* and has held that the journal of the House contains evidence that *the bill was printed before its final passage*, and that the Act was legally passed.

Dragovich v Iroquois Iron Co., 269 Ill. Sup. 478.

“The judgment of the Circuit Court is affirmed.”

Laura Staley v Illinois Central Railroad Company
268 Ill. Sup. 356.

June 24, 1915.

Opinion by MR. JUSTICE CARTER.

“This is a proceeding under the Workmen’s Compensation Law of this state (Laws 1911, page 315), commenced by petition filed by plaintiff in error in the Circuit Court of Marion county for compensation for the death of her husband, who was run over and killed by one of defendant in error’s switch engines in its yards, near Centralia, Illinois.

“The defendant in error was served with notice and after certain amendments had been made, filed an amended answer, wherein it set up that the cause stated in the petition was not comprehended within the meaning of the Workmen’s Compensation Act but was within the scope and meaning of the Federal Employers’ Liability Act.

“The trial court found in favor of plaintiff in error and entered judgment in her favor for \$3,500, payable in a lump sum.

“From this judgment defendant in error appealed to the Appellate Court. That court affirmed the judgment of the trial court except that it was held that under the Workmen’s Compensation Act it should not be for the full amount of \$3,500 but should have been commuted at its present value. Plaintiff in error thereupon brought the case to this court by petition for ‘certiorari.’

“Several questions are raised and argued in the briefs. It is first necessary to consider and decide the question whether there can be a recovery in this cause under the Illinois Workmen’s Compensation Act, so-called, or whether the case is comprehended within the meaning and scope of the Federal Employers’ Liability Act and recovery can only be had under this last named law.

“If the position of defendant in error on this point, raised by filing cross-errors in this court, is sustained, it will be unnecessary to consider the other questions involved.

“Counsel for defendant in error insist in their amended answer that plaintiff in error’s intestate was engaged, at the time of his fatal injury, in inter-state commerce and that therefore the Federal Employers’ Liability Act controls, superseding all state laws upon the subject.

“The evidence showed that the deceased was working on the day of the injury (March 28, 1913) in defendant in

error's switch or terminal yards, near Centralia, Illinois, as a machinist, his duty being to repair a switch engine in the yards. He was sent by his superior officer to repair the whistle rod on an engine engaged in switching and handling inter-state commerce. As he went down a switch track he saw the engine coming toward him and stepped out of its way onto another track immediately in front of another moving engine, by which he was knocked down and killed instantly. The last named engine was also engaged *in switching all classes of freight, inter-state as well as intra-state*. Counsel for defendant in error contend, and counsel for plaintiff in error concede, that the *deceased was at the time of the accident engaged in inter-state commerce*. On the evidence as presented in the record before us no other conclusion can be reached under the holdings of the United States Supreme Court. *Pedersen & R. R. v Delaware & R. R.*, 229 U. S. 146; *St. Louis & Ry. v Seale*, 229 U. S. 156; *Missouri & Ry. v U. S.*, 231 U. S. 112.

"The Federal Employers' Liability Act will therefore control if it covers the identical subject matter or the same field as that covered by the Illinois Workmen's Compensation Act.

"Counsel argue at length as to whether the Workmen's Compensation Act imposes a direct burden upon inter-state commerce. In our judgment that is not the decisive question here. The general principles governing the exercise of Federal authority, when inter-state commerce is affected, have been firmly established by the decisions of the United States Supreme Court. The power of congress to regulate commerce among the several states is supreme and plenary under the Constitution. The reservation to the states to legislate on questions affecting inter-state commerce is only of that authority which is consistent with and not opposed to the grant of congress, which extends to every instrumentality or agency by which inter-state commerce may be carried

on. The decisions hold that with respect to certain subjects embraced within the grant of the Constitution which are of such a nature as to demand that if regulated at all their regulation should be prescribed by single authority, the power of congress is exclusive, while in other matters admitting of diversity of treatment, according to the special requirements of local conditions, 'the states may act within their respective jurisdictions until congress sees fit to act, and when congress does act, the exercise of its authority overrides all conflicting state legislation. (*Simpson v Shepard*, 230 U. S. 352.) The doctrine that the states can not, under any guise, impose direct burdens upon inter-state commerce forms the basis of the foregoing classification.

"Within certain limitations there remains to the states, until congress acts, a wide range for the exercise of the power appropriate to territorial jurisdiction, although inter-state commerce may be affected. Included within these limitations are those matters of a local nature as to which it is impossible to derive from the constitutional provisions an intention that they should go uncontrolled pending Federal legislation. It is therefore 'competent for the state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although inter-state commerce may incidentally or indirectly be involved. (*Simpson v Shepard*, *supra*.) It is unnecessary for us to refer to or discuss the various decisions touching this question. Many of them are referred to and considered and this general doctrine discussed at length in the case from which we have just quoted. The question in the case before us is not whether the deceased was engaged in inter-state commerce at the time of the accident, for that is conceded. Neither is it necessarily the question whether the Workmen's Compensation Act affected directly and substan-

tially an instrument of commerce. The argument of counsel for plaintiff in error that the Workmen's Compensation Act affects the employee 'solely as a member of society and not as an instrument of society,' and is therefore within the police power of the state, can not be sustained if congress has by legislation acted on the 'subject matter' or in the 'same field' (as those terms are understood in the decisions) as that covered by the Illinois Workmen's Compensation Act.

"Counsel in their briefs state that the particular question here presented has never been considered or decided by any court, either state or Federal. We have been unable to find any decision of a court of final review where such question has been under consideration. But see as bearing on this question in 'nisi prius' and intermediate courts of review the following:

"*Rounsaville v Central R. R.*, 37 N. J. L. J. 295.

"*Smith v Industrial Acc. Com. of Cal.*, 147 Pac. Rep. 600.

"*Winfield v N. Y. Central &c R. R.*, 153 N. Y. Sup. 499. * * *

"(After quoting the Federal Act and reviewing numerous Federal decisions the court proceeds):

" 'We have referred to and commented on practically every decision of the United States Supreme Court bearing upon this question. The decisions from other courts could not be controlling and, at most, only persuasive. Counsel on the one hand argue that under the fair construction of the Federal Employers' Liability Act as construed by these decisions the Act covers the field of liability of common carriers by railroad for all injuries occurring in inter-state commerce, whether or not there has been negligence on the part of the employer, while counsel on the other hand contend that the act covers only liability of common carriers in inter-state commerce when there has been such negligence. It is clear that there can be no recovery under the Federal Employers'

Liability Act, properly construed, in the absence of negligence on the part of the employer, as that term is used in the statute and in the decisions construing the same. But if the question of negligence alone determines the applicability of the Federal law, then, before it can be held that such law is applicable, there must be a final adjudication as to whether the injury resulted from negligence. Obviously, congress legislated on more than the subject of negligence. It legislated on that but also on the amount of recovery, and superseded all state laws on that subject as shown by the decisions already cited. It also legislated on the subject of limitation when the action should be begun. It also legislated as to what persons could recover under the Federal Act and when an action would survive the death of an injured person; also on the subject of assumed risk and contributory negligence. * * *

“The field of liability as to employees injured while engaged in inter-state commerce on railroads is occupied exclusively by the Federal Employers’ Liability Act—and that, too, regardless of the negligence or lack of negligence of either party of the litigation. Beyond question the Federal Employers’ Liability Act superseded, as to injuries of employees engaged on railroads in inter-state commerce, all statute or common law in force in the state of Illinois previous to the passage of the Workmen’s Compensation Act. That was the precise holding in Wabash R. R. Co. v Hayes, 234 U. S. 86.

“The legislature, in passing the Illinois Workmen’s Compensation Act of 1911, intended that wherever it was in force it should supersede all other state statutes and the common law as to the liability of employers for injuries to employees, for *section 1 of said Act provides, among other things, that any employer having elected to come within its provisions will ‘thereby relieve himself from any liability for the recovery of damages except as herein provided.’* The United States Supreme Court takes that view of a similar compensation act in the state

of Ohio in *Jeffrey Mfg. Co. v. Blogg*, 235 U. S. 571, in which case, referring to that state Act, the court said:

“ ‘It is one of the laws which has become more or less common in the states, and aims to *substitute a method of compensation, by means of investigation and hearing before a board, for what was regarded as an unfair and inadequate system, based upon the statutes or the common law.*’

“The Illinois legislature, in passing the Act here in question, clearly understood that certain injuries occurring in inter-state commerce should not be within the provision of the Act, for in *section 2* it is provided that it should apply ‘in the business of carriage by land or water, * * * except as to carriers which shall be construed to be *excluded* herefrom by the *laws of the United States* relating to liability to their employees for personal injuries suffered while engaged in *inter-state commerce*, where such laws are held to be exclusive of all state regulations providing compensation for accidental injuries or death suffered in the course of employment.’ This provision tends strongly to show that the state legislature did not intend to place within the provisions of the Workmen’s Compensation Act all injuries that occurred on railroads in Illinois, whether the injured person was engaged in intra-state or inter-state commerce.

“Counsel for plaintiff in error argue that many of the injuries on railroads, while engaged in inter-state commerce, occur without any negligence on the part of any one, and that therefore the conclusion here reached will leave many injured employees—or, if the injury causes death, their relatives—without any opportunity for compensation, and is contrary to the spirit of the times, which demands humane legislation covering this subject. That argument may well be addressed to the Federal congress. This court must confine itself to the proper construction and operation of this Act and can not consider the evils which it is claimed will arise from the execution

of the Federal Employers' Liability Act, however real those evils may be.

"It is suggested but not argued in the briefs of counsel for plaintiff in error, that the rights and liabilities under the two acts here in question are in a sense *cumulative*, and that the payment of compensation under the state Act would not bar an action under the Federal Act, under the reasoning of the United States court in *Philadelphia &c R. R. v Schubert*, 224 U. S. 603, and other like cases. Can the Workmen's Compensation Law of Illinois, requiring compensation to be paid to employees by employers for injuries, be fairly included within the terms of section 5 of the Federal Employers' Liability Act?

"Workmen's Compensation and Industrial Insurance Laws had not been adopted in any of the states of this country in 1908, at the time the Employers' Federal Liability Law went into effect. The first state Act of that kind was passed in June, 1910, by the state of New York. Since then at least 21 other states have passed such laws.

"Congress, therefore, did not have Workmen's Compensation Acts particularly in mind when it drafted the Federal Liability Law.

"It is true this court has held that when parties have elected to come under the Workmen's Compensation Act of this state *the provisions of that Act thereby become a part of the contract of employment* (*Deibeikis v Link-Belt Co.*, 261 Ill. 454), and therefore that contract might be included in the terms '*any contract*,' referred to in the first part of said section 5; but the contract referred to in that section is one that has been entered into for the purpose of enabling the carrier 'to exempt itself from liability created' by the Federal Act. Surely it can not be reasonably held that the Workmen's Compensation Act is a contract entered into for that purpose.

"The words 'insurance relief,' 'benefit' or 'indemnity' would, none of them, in the connection in which

they are used, seem to include the Workmen's Compensation Act. While that Act is based upon the same general principles as workmen's benefit insurance, it would hardly be supposed that congress, in said section 5, intended to cover such a compensation act as the one here under consideration.

"As already stated, the Federal Act in a certain sense in some cases at least, requires the master to be an insurer of the safety of his employees, the same as does the Workmen's Compensation Act. Having in mind the history of the legislation, both Federal and state, on the questions here under consideration, we can reach no other conclusion, under the wording of said section 5, than that the Illinois Workmen's Compensation Act *was not intended to be included by congress within any of the exceptions stated in said section.*

"What has already been said heretofore in this opinion with reference to the intent of the Illinois legislature in passing the Workmen's Compensation Act practically demonstrates that that body did not intend the remedy thereunder to be in *any sense cumulative to the remedy* provided for in the Federal Act. Congress could include Workmen's Compensation Acts within the exception provided for in said section 5 but has not yet seen fit so to do.

"The judgments of the Appellate and Circuit Courts must be reversed and the cause remanded."

Brown v City of Decatur

188 Ill. App. 147.

"This is an appeal from a judgment of the Circuit Court of Macon county on an appeal in that court from an award of arbitrators appointed under the provisions of the Act of June 10, 1911, commonly called the Illinois Workmen's Compensation Act.

"The arbitrators awarded appellant compensation in the sum of \$2,496. On an *appeal from said award, to the Circuit Court* on a trial 'de novo' the judgment of the

court reversed the award of the arbitrators and dismissed appellant's claim.

"Appellant's intestate was killed October 19, 1912, and subsequently appellant presented her petition to the County Court, as provided by said Act, asking the court to appoint an arbitrator to act with the arbitrators appointed by herself and by her intestate's employer. *The court appointed an arbitrator* and the three arbitrators proceeded to hear the matters in dispute and filed its report with the Secretary of the State Bureau of Labor Statistics, which report awarded to appellant the said sum as the amount of compensation to be paid to her under said Act for the death of her intestate. * * *

"There is no apparent conflict as to the facts, but the principal contentions of appellee are that the employment of the deceased was not one of the employments covered by the Act and that his death was not caused by the sort of injury for which the Act allows compensation, that is, that it did not arise 'out of his employment.' It is also suggested that appellee was not an employer maintaining a structure within the meaning of the Act.

"Appellee is a *municipal corporation and operates its own filtration plant and water system.* * * * It would require a most strained and unreasonable construction to hold that *the maintenance of water mains in connection with a water works plant would not be the maintaining* of a structure. *The word structure* commonly means anything that is built or constructed, and that it was the intention of the legislature that such should be its definition in the construction of this Act there can be no doubt.

"It is conceded that the injury occurred *in the course of the employment* of plaintiff's intestate, but it is insisted by appellee that it did not arise *out of said employment.* *The Illinois Act is substantially adopted from the English Acts of 1897 and 1906 (Stat. 60, 61, Vict. Ch. 37; Stat. 6 Edw. 7, Ch. 57), and it will be presumed that the*

*construction given to them by the English courts is to be applied to the Illinois Act unless such construction is inconsistent with the spirit and policy of the laws of this state. * * **

“The *generic classification* of the injuries for which an employer is liable under the Act is those that are received *in the course of employment*, but these are limited and restricted to such as also arise *out of the employment*. It is conceivable that in many instances it might be difficult to determine the distinction between injuries received in the course of employment and those that arise out of such employment.

“The injury received in this case was caused by an agency beyond the control of the employer (a train). The first question which naturally presents itself for consideration is, was the deceased at the time of the injury *in the performance of an act incidental to his employment*. He was proceeding to the hand car for the purpose of putting on his rubber boots. He had been directed by the foreman to bring his rubber boots with him. * * * Deceased saw Walmsley's shoes and coat on the hand car, which was about ten steps away, and as it was the only object on which he could sit, while he put on his boots, unless he sat upon the ground between the tracks, he was not acting out of the sphere of his employment in attempting to go to the hand car for said purpose. The act he was doing at the time was incidental to and in the furtherance of the duties to his employer.

“*Some of the English cases have given a very liberal construction to the question of what acts of employees are incidental to their employment.* In the case of *Keenan v Flemington Coal Co.*, 5 Fraser 164, a miner quit work temporarily to get a drink at a boiler. There were two ways of reaching the boiler, one a safe and usual way and the other a dangerous way. He chose the dangerous way and in returning was killed. Compensation was allowed and it was held that a man does not cease to be in

the course of his employment every time he, for some necessary reason, leaves his work, and that it was a necessary reason for stopping work to get a drink of water, because when a man feels thirsty it hinders him from working with vigor.

“In the case of *Wilson v McLaughlin*, Sess. Cas. 529, a workman was employed to load and unload trucks hauled by a traction engine. While riding in one of them, and when under the influence of liquor, he dropped his pipe and in getting down to pick it up he was run over. Compensation was allowed and it was held that he was doing a thing which a man while working may reasonably do. ‘A workman of this sort may reasonably smoke, he may reasonably drop his pipe, and he may reasonably pick it up again, and it was held that his attempt to get the pipe was merely an incident in the day’s work.

“It is urged that going to the hand car to put on his boots was a mere act of convenience for the personal benefit of the deceased. Counsel confuses the act itself with the manner in which he was doing it. If he was attempting to perform an act incidental to the duties of his employment, it matters not that he took a more convenient way of doing it than was necessary.

“*Keenan v Flemington Coal Co.*, 5 Fraser 164;

“*Astley v Evans*, 5 K. B. 1036;

“*Evans & Co. v Astley*, A. C. 674.

“Compensation has also been allowed when the employee has been injured while performing his duties in a manner in *direct disobedience* to his orders. In *Harding v Brynddu Colliery Co.*, 2 K. B. 747, a miner was directed to drill a hole from a stall above into a stall below to allow gas to escape. The stall below was boarded up as dangerous. He was unable to drill the hole from the upper stall and asked permission to go into the lower stall to tap in order to expedite the work. Permission was refused, and he deliberately disobeyed, went into the dan-

gerous stall and was injured. Compensation was allowed.

“In *Conway v Pumpherston Oil Co.*, Sc. Sess. Cas. 660, a miner in direct disobedience to orders went into an entry filled with gas to get a pick which he had left there the previous day and was injured. Compensation was allowed and it was held that he was fetching a pick for the work in which he was engaged and was working within the general sphere of his employment.

“In *Whitehead v Reader*, 2 K. B. 48, the injured employee was a carpenter, part of whose duty it was to sharpen tools at a grind stone operated by machinery. He had been forbidden to touch the machinery. The driving belt slipped and in trying to adjust it he received the injury complained of. Compensation was allowed and it was held that he was performing an act incidental to his master’s business and was not idling or doing something which was clearly beyond the scope of his employment. It is further contended that being struck by the engine while crossing the tracks was a risk shared by all mankind and was not such a hazard as was incidental to his employment. Risks incidental to the employment do not mean such as are peculiar to the employment in question as distinguished from other employments.

“In *Warner v Couchman*, 1 K. B. 351, it was said: ‘The law does not say “arising out of his employment and out of that employment alone.” Other employments have nothing whatever to do with the question.’ If the risk was such that by reason of the work in which he was engaged, in the place where he was engaged and in the manner in which he was compelled to perform that work, he was more readily exposed to it than the public generally, then it was abnormal and incidental to his employment. * * *

“*The English authorities have also given a liberal construction to this phase of the question.*

“In the case of *Pierce v Provident Clothing Co.*, 1 K.

B. 997, a canvasser in a London district was killed on the streets by an electric car while riding a bicycle. He was permitted to ride a bicycle by his employer, but not required to do so. Compensation was allowed on the ground that his duties necessarily involved his spending a great part of the day in the streets, and he was, beyond all doubt, much more exposed to the risks of the street than ordinary members of the public.

“Under a substantially similar state of facts, compensation was allowed in the case of *M’Neice v Singer Sew. Machine Co.*, Sc. Sess. Cas. 12. To the same effect is *Millar v Refuge Assurance Co.*, Sc. Sess. Cas. 37. In *Challis v London & Ry.*, 2 K. B. 154, a locomotive engineer was injured by a stone thrown by a mischievous boy from a bridge below which the train was passing. Compensation was allowed on the ground that it was a matter of common knowledge and experience that a train in motion has great attraction for mischievous boys, and that it was a risk incidental to the employment.

“In *Anderson v Balfour*, 2 Ir. Rep. 497, a gamekeeper was attacked by a poacher. Compensation was allowed on the ground that it was matter of common knowledge that hostility exists between gamekeepers and poachers and that one of the risks attached to the occupation of gamekeeper was the risk of this sort of injury.

“In *Nisbet v Rayne & Burne*, 2 K. B. 689, a cashier was murdered on a train while carrying money to a colliery to pay the men. Compensation was allowed on the ground that the man was exposed to the special risk assumed by cashiers, who are known to carry considerable sums of money on regular days by the same route to the same place, of being robbed.

“In *Andrew v Failsworth Industrial Society*, 2 K. B. 32, a bricklayer on a scaffold thirty feet above the ground was struck by lightning during a thunder-storm. Compensation was allowed on the ground that the position of

the bricklayer was a very exposed one and on account of the elevation from the ground the risk was appreciably greater than the normal risk.

“In *Davies v Gillespie*, 105 L. T. 494, the first officer of a vessel in a West Indian port received a sunstroke while superintending the loading of a cargo. He was compelled to stand on the steel deck of the vessel for a long time exposed to the full glare of the sun, and compensation was allowed on the ground that it was an abnormal risk.

“In *Morgan v Owners S. S. Zenaida*, 2 B. W. C. C. 19, a common seaman on a vessel in a Mexican port was ordered over the side to paint a ship. He protested on account of the excessive heat, but was ordered to continue. Compensation was allowed because the risk was abnormal. We have not attempted to comment upon or differentiate between all the cases that have been cited in the briefs, but we are of the opinion that not only from the principles of construction enumerated from the cases mentioned, but from a *plain, common sense view of the Act* and the facts in this case, that at the time of the injury appellant's intestate was in the performance of an act *incidental to the duties of his employment*, and that the risk which caused his death was also incidental to his employment. The cause is remanded with directions to enter judgment on the award of the arbitrators as contained in said report.

Matecny, Administrator v Vierling Steel Works

187 Ill. App. 488.

July 2, 1914.

“This appeal is taken from a judgment of the Superior Court of Cook county, ordering a lump sum payment under the Act approved June 10, 1911, and in force May 1, 1912, commonly known as the Workmen's Compensation Law. Joseph Matecny, an employee of the appellant, was fatally injured in July, 1912, in the course of

his employment, the injuries sustained arising out of said employment. Both the appellant and the deceased were subject to the provisions of said Compensation Law, and the administrator of the estate of Matecny brought these proceedings for the purpose of securing the death benefits due and to become due under the law in a *lump sum*, in accordance with the provisions of *section 5½* of the Act. The deceased left surviving him as his only heirs at law, his mother, Mary Matecny, and five brothers and sisters. The mother at the time these proceedings were commenced was fifty-eight years of age, an invalid unable to work and support herself and requiring an attendant to care for her. The deceased had contributed to her support within five years previous to the time of his death, but none of the brothers and sisters were dependent upon the earnings of the deceased. It was agreed that the total amount of compensation due and to become due under the Act was \$1,861.60, payable in bi-weekly installments of \$8.95 and that the present worth of the sum named payable in such installments with interest computed at five per cent per annum was \$1,551.34. The facts, above stated, and all matters of fact material to the issues set up in the petition were stipulated between the parties, and upon a hearing by the court without a jury the facts so stipulated were found by the court, which also found that it was to the best interests of the parties that the entire compensation be paid in a lump sum, and judgment was entered for the appellee for \$1,551.34. * * *

“There were four propositions of law submitted to the court and marked ‘refused,’ as follows:

“‘1. The court holds as a matter of law that the word *beneficiaries* as used in *section 4-e* of the Act refers to *lineal heirs and collateral heirs dependent upon deceased’s earnings* referred to in *paragraphs a and b* of the same section.

“‘2. The court holds as matter of law that in this

case the sole beneficiary entitled to receive compensation under section 4 of the Act, is the mother of the deceased.

“ ‘3. The court holds as matter of law that where an employee sustains an injury which results in death under circumstances which require the employer to pay compensation under the provisions of the Act, and leaves a mother to whose support he has contributed within five years previous to the time of his death, and collateral heirs who were not dependent upon his earnings, as his sole heirs at law, the weekly payments provided in section 4-d are payable to the administrator during the lifetime of the mother, and if the mother shall die before the payments provided by sections 4-a and 4-d are completed, the employer shall not be liable to make further payment after the death of the mother.

“ ‘4. The court holds as a matter of law that where an employee sustains injuries which result in his death, under circumstances which require the employer to pay compensation under the terms of the Act, and leaves surviving him a mother to whose support he has contributed within five years previous to the time of his death, and collateral heirs, who were not dependent upon his earnings, as his sole heirs at law, and where said mother was at the time of the injury and death 58 years of age and an invalid, the court will not order the compensation provided by section 4-a of the said Act to be paid in a lump sum under the provisions of section 51½ of said Act.’ * *

“The first question for us to decide is: Is the compensation received by the administrator, under the law, payable by the administrator to the mother alone, or do the non-dependent brothers and sisters participate in the amount received? In determining this question, we must look to the entire Act and ascertain, if possible, the intent and purpose of the legislature in enacting the law. ‘It is always necessary, first, to understand the subject of an act and the object to be accomplished by it. Once the subject matter is clearly ascertained and the general

legislative purpose discovered, a key is thereby furnished which will enable one to correctly interpret all of the constituent and subordinate elements found in the Act.' *Dietz v Big Muddy Coal & Iron Co.*, 263 Ill. 480.

" 'It is an elementary rule of construction that all parts of a statute must be considered together and not each by itself.' * * * The several provisions of the statute should be construed together in the light of the purpose and objects of the Act, so as to give effect to the main intent, even though in so doing particular provisions are not construed according to their literal meaning.'

"The title of the Act is significant: 'An Act to promote the general welfare of the People of the State by providing *compensation* for accidental injuries or death suffered in the course of employment.' Section 4 of the Act is the one that designates the beneficiaries in case of the death of the employee. In the first sentence of this section and in paragraphs d and e of the same section, in speaking of the amount that the employer shall pay, it is called *compensation*. Some of the meanings of the word 'compensation' as defined by the Century dictionary are as follows: 'That which is given or received as an equivalent, as for services, debt, want, loss, or suffering; indemnity; recompense; amends; requital. That which supplies the place of something else, or makes good a deficiency, or makes amends.'

"If paragraph e of section 4 were not in the Act it would be very plain to whom the payments of compensation are to be made. The appellee relies upon paragraph e to sustain his contention that the administrator must distribute the compensation received by him to the heirs of the deceased employee, according to the Illinois statute of descent and distribution of personal property. Under paragraphs a and b, the compensation would be paid only to the heirs to whose support the deceased had contributed. Paragraph c provides that the employer shall only be required to pay funeral expenses to the administrator,

in case the employee leaves no *dependent* heirs. This paragraph is an important one in the interpretation of the intent and purpose of the Act. After a very careful study of the entire Act, in the light of the rule laid down by our Supreme Court, we have reached the conclusion that the intent and purpose of the Act is to make compensation, in part at least, to the injured workman, for the pecuniary loss sustained by him; or in case of his death, caused by injuries sustained by him in the course of employment, to compensate, in part at least, his heirs, to whose support he had contributed during his life time, for the pecuniary loss sustained by them through the death of the said workman. The purpose of the law (as we construe it) can only be carried out by making all payments due under the law payable to the injured workman or in case of his death from injuries sustained by him in the course of his employment, to those to whose support he had contributed during his lifetime.

“In refusing the first proposition of law submitted by the appellant, the trial court interpreted the word ‘beneficiaries’ in paragraph e as meaning all the heirs of the deceased, regardless of whether they were dependent or not. We cannot agree with this interpretation. Such a construction, in our judgment, does violence to the plain purpose and spirit of the Act and it would work a grave injustice in this and many other cases arising under the Act. The word ‘beneficiary’ means ‘one for whose benefit a trust is created, a “cestui que trust.” ’

“Keeping in mind the purpose of the Act, it is not difficult to interpret paragraph e. The beneficiaries contemplated by the paragraph are the particular heirs who have suffered pecuniary loss by reason of the cutting off of the wages of the deceased employee. These are the heirs who are entitled to the *compensation* under the Act. Paragraph e simply describes the method of determining the respective shares of the *dependent* heirs in the trust fund in the hands of the administrator.

“The present case illustrates what might follow if the appellee’s interpretation of paragraph e were adopted. The deceased left an invalid mother dependent upon him for support; he also left five brothers and sisters, none of whom were dependent upon his earnings for support and who suffered no pecuniary loss by reason of his death. If the appellee is correct in his interpretation of paragraph e, the five brothers and sisters would receive five-sevenths of the sum payable by appellant to the administrator, and they would receive the same solely by reason of the fact that the deceased employee left a mother dependent upon him for support. It is conceded that if it were not for the fact that the deceased employee left surviving him a mother dependent upon him for support, the administrator could recover nothing against the appellant in this case. We are satisfied that the mother is entitled to the entire compensation that the appellant must pay under the Act. It follows from what we have said that the court erred in refusing the first and second propositions of law submitted by the appellant.

“The appellant claims that under section 11 of the Act, the payments cease upon the death of the dependent person or persons entitled to receive them, and that in the present case the appellant would not be obligated to make further payments to the administrator after the death of the mother. The appellee contends that, even if it be held that the mother was the sole beneficiary, still her right to the entire compensation became vested upon the death of Joseph Matecny, and the appointment of an administrator for his estate, and that this right would survive her death and inure to the benefit of her estate. After a careful consideration of this question, we have arrived at the conclusion that the contention of appellant is correct, and that the obligation of the appellant to pay compensation to the administrator would be extinguished on the death of the mother. We do not believe that the Act contemplates that the employer shall pay any money to

non-dependent heirs. It follows from what we have said that the court erred in refusing to hold the third proposition of law submitted by appellant.

“It is apparent from the action of the trial court in refusing the first, second and third propositions of law submitted to him by appellant, that the court interpreted the law to mean that, in addition to the mother, the five brothers and sisters were beneficiaries under the Act, and that the employer was obligated to continue the payments provided by section 4, after the death of the mother.

“In the view of the law taken by the trial court, the death of the mother would have no controlling effect on the payments by appellant. The fact that the mother was fifty-eight years of age, and an invalid unable to work and support herself, requiring that some one should attend to and take care of her, was merely a circumstance to be considered, together with the fact that there were five young brothers and sisters of the deceased employee, in determining whether the appellant should be ordered to pay the entire compensation in lump sum. Section 5½ allows the court to order the employer to pay the compensation, or any part thereof, in a lump sum, where it *appears to the best interest of the parties* that such compensation be so paid. Plainly the law contemplates that the court, in passing upon the question of the payment of the compensation in a lump sum, shall regard the rights of the employer as well as the rights of the beneficiaries. The appellant concedes that, under the stipulated facts in this case, the court would have been justified in ordering the appellant to pay a portion of the compensation in a lump sum, as provided in section 5½, but it strenuously insists that it was exceedingly unfair, and not to the best interests of the appellant, under the facts of the case, that it should be compelled, on the filing of the petition by the administrator, to pay the entire compensation in a lump sum. The appellant insists that (in the absence of a lump sum order) it was obligated to make the payments

in installments, extending over a period of eight years, and that the court could not, with any reasonable degree of certainty, foresee that the mother could live so long, in view of her age and the precarious condition of her health, and that the trial court failed to give proper effect to these important facts in passing upon the petition of the appellee.

“If we are correct in our interpretation of the law, it follows that the trial court, in passing upon the petition in this case, adopted an erroneous theory of the law, and we cannot say, under the facts of the case, that this error did not work to the prejudice of the appellant.

“Had the court interpreted the law as we do, it might very well, under the particular circumstances in this case, have refused to order the appellant to pay more than a part of the compensation in a lump sum.”

(Reversed and Remanded.)

Krisman v Johnston City Coal Company

190 Ill. App. 612.

“At the time the injury complained of occurred, the Act providing for compensation for accidental injuries or death, approved June 10, 1911, was in force and the same *applied to the business* in which appellant and appellee were engaged. * * * It appears (from *section 3*) to be a *presumption of law* that both appellant and appellee were *covered* by the provisions of said Act, unless it should appear that one or both of them had filed an *election to the contrary* with the State Bureau of Labor Statistics, as provided by law. *Dietz v Big Muddy Coal & Iron Co.*, 263 Ill. 480. There was no allegation in the declaration that the parties were not under the provisions of the Act, and no proof offered to show that appellee had filed the notice required to exempt him therefrom. The record does show, however, that counsel for appellee

said: 'I desire to introduce plaintiff's Exhibit A in evidence which is a *certified copy of the official notice* given by the defendant to the State Bureau of Labor Statistics, in which they refuse to operate under the provisions of the Compensation Act of the State of Illinois.'

"Counsel for appellant objected to the introduction of this exhibit for a number of reasons, among others, that it was not properly certified or proven and the court sustained the objection and the exhibit was not admitted in evidence. The instrument sought to be introduced is not preserved in the record for our inspection, so that we have no means of determining whether the ruling of the court upon this question was proper or not and therefore it must be presumed that the instrument was properly excluded. Appellant must also be presumed to be satisfied with the ruling of the trial court in this regard as he has filed no cross-errors. Appellant upon the trial offered no proof upon this question. We are therefore bound by the Act to hold that under the proofs produced in this case *the parties were covered* by the provisions of said Compensation Act and that therefore this *suit for damages cannot be sustained*.

"The judgment will accordingly be reversed and the cause remanded with directions to the court below to give leave to appellee to amend his declaration by *allegations* charging that appellant was at the time of the injury transacting its business under said *Compensation Act*, so that evidence may properly be introduced by him upon that question, or to dismiss the suit without prejudice to his right to proceed under said Act."

John French v The Cloverleaf Coal Mining Company
190 Ill. App. 400.

October 16, 1914.

"This is an action on the case begun by appellee against appellant to the January term, 1913, of the Montgomery County Circuit Court to recover damages for

personal injuries suffered by appellee while working as a shot firer in appellant's coal mine. The declaration contains two counts, both averring common law negligence. Each count avers that the appellant was operating a coal mine in Montgomery county; that appellee was employed therein as a shot firer; that the appellant had elected *not to accept the provisions of the Compensation Act* in force May 1, 1912, and was thereby deprived of the defenses of assumed risk; that the injury was caused in whole or in part by the negligence of a fellow-servant and proximately caused by the contributory negligence of appellee, except that such contributory negligence shall be considered in reducing the amount of damages; that appellee had, as an employee of appellant, elected to accept the provisions of said Act; that in the underground works of said mine were divers roadways, cross-cuts and rooms; that on September 16, 1912, appellee was engaged in rooms 3, 4, 5, 6 and 7 off a certain entry, and while engaged as a shot firer, after placing a shot in room 7, appellee started to room number 4, where he encountered an obstruction of three cars which appellant had negligently placed there, with gob on either side, which appellant had negligently placed, wholly obstructing the travel of appellee, and while so delayed, a shot exploded and thereby appellee was injured.

"The second count contains the further averment that after appellee had ignited certain shots and started to retire to a place of safety he encountered an obstruction, consisting of cars with gob on either side thereof, negligently placed and permitted to remain, whereby appellee was delayed.

"A demurrer to both counts of the declaration was overruled. The appellant then filed a plea of not guilty. On a trial before a jury a verdict for \$1,029.16 was returned in favor of appellee, on which judgment was rendered.

"It is insisted that the court erred in overruling the

demurrer for the reason the Compensation Act is unconstitutional. The Supreme Court has held the *Act is constitutional*. *Deibeikis v Link-Belt Co.*, 261 Ill. Sup. 454; *Dietz v Big Muddy Coal & Iron Co.*, 263 Ill. Sup. 480; and if the Act had not been passed on, the appellant by appealing to this court has *waived* that question.

“*Luken v Lake Shore & Ry.*, 248 Ill. 377.

“It is also contended that the evidence does not sustain the finding in favor of appellee for the reason that the evidence does not show the negligence of appellant was the proximate cause of the injury. The evidence shows that there were loaded coal cars standing in the neck of rooms 6 and 7 and that there was gob piled on both sides of the cars in the neck of room 6, which was 18 inches high at the wheels and sloped back to the rib, where it was 4 feet high, and that this obstruction would delay a person trying to get out of the room in a hurry. Appellee had lighted the fuse to the shots and had then run to the mouth of the room, where, having to crawl over the gob to get out, he was delayed until the shot exploded and a piece of the rock struck him on the right side of his face. If the cars had not obstructed the neck of the room, or the gob had not hindered him so that he had to crawl over it, he would have been out of the neck of the room before the explosion occurred. We think it was a question for the jury whether the negligence of the defendant was or was not the proximate cause of the injury. The evidence sustains the finding in favor of appellee.

“It is also argued that appellee can only recover the compensation that is provided for by the Act. The appellant elected not to pay compensation under the Act. *The effect of that election by appellant is to relegate appellee to a suit at law for his damages measured by the law as if it existed prior to the Act, except that contributory negligence, if any of appellee, shall be considered in*

reduction of damages. There was no error in permitting appellee to prove his daily wages.

“It is contended that the court erred in refusing the second refused instruction requested by appellant. The first part of the instruction was fully given in both appellant’s second and third given instructions, and the remainder of the refused instruction, which tells the jury ‘that the plaintiff must prove by a preponderance of the evidence that the said negligent act was the direct and proximate cause of the injury,’ is fully given in appellant’s thirteenth, which tells the jury that ‘the damages to be recovered in an action must always be the natural and proximate consequences of the wrongful act complained of; * * * that to entitle the plaintiff to recover in this case the damages claimed must be the direct consequences of the act complained of. The relation of cause and effect must be shown to exist between the act complained of and the injury.’ There is no error either in giving or refusing instructions.

“It is also insisted that the judgment is excessive. The evidence shows that appellee is forty-four years of age, that he was earning \$4.72 a day, that both his upper and lower jaws were broken, four teeth were knocked out and seven pieces of bone extracted; he was out of work nine weeks, confined to his bed two weeks, suffered intense pain and had a doctor’s bill of about \$75.

“We cannot say that the judgment is excessive or that it should be set aside because the damages were calculated down to cents. The judgment is affirmed.

(Affirmed.)”

Przykopski v Citizens’ Coal Mining Co.

270 Ill. Sup. 275.

“The trial court having held that the Act was not passed in the method required by the Constitution, and was therefore unconstitutional and void, the plaintiff

filed two additional counts charging negligence. The court says:—

“The right of appellant to raise the *question of the constitutionality* of the Statute on this appeal was not waived by filing the two additional counts. We have held in *Dragovich v Iroquois Iron Co.*, 269 Ill. 478, that the Workmen’s Compensation Act of 1911 was not invalid by reason of the method or manner of its passage by the General Assembly. The error of the court in holding the Act invalid necessitates a reversal of the judgment in this case, and it is unnecessary to discuss any other questions raised upon this record.

“The judgment is reversed and the cause remanded, with directions to the trial court to overrule the demurrer to the second, third and fifth counts.”

The People ex rel Carrie L. Munn et al v John P.

McGoorty, Judge

270 Ill. Sup. 610.

MR. JUSTICE CRAIG delivered the opinion of the court.

“The petitioners, on motion duly made, were granted leave to file in this court an original petition for a writ of mandamus to compel the respondent, a judge of the Circuit Court of Cook county, to set aside and vacate a certain order entered by him denying the prayer of the petitioners for an *appeal to the Appellate Court* for the First District from a final order and judgment entered by the respondent, while sitting as judge of said Circuit Court and to compel the respondent to grant said prayer for an appeal to said Appellate Court. Respondent has filed a general demurrer to the petition, and, taking such averments thereof as are well pleaded to be true, it appears from the petition that on November 10, 1914, Conrad Casparson received injuries by inhaling fumes or gases emanating from a fire caused by burning moving picture film scraps, composed of celluloid, from which he died the day following. Alma M. Casparson, adminis-

tratrix of estate of said Conrad Casparson, deceased, brought proceedings before the State Industrial Board under the Workmen's Compensation Act of 1913, to recover compensation under said Act because of the fatal injuries alleged to have been received by said deceased while in the employ of the petitioners. The Industrial Board on March 5, 1915, rendered its order or decision against the petitioners and in favor of said Alma M. Casparson, administratrix. On the same day the petitioners filed in the Circuit Court of Cook county their petition for a writ of *certiorari*, praying that said writ be directed to said Industrial Board commanding said Board to certify and bring into court a full, true and complete transcript of the records and files connected with said proceedings, and that said court, upon the production thereof, examine and inquire into the record of the proceedings and the decision of said Board, and if said proceedings were found illegal or unauthorized by law, that the same be quashed and set aside. Later a motion was made by the respondent to said writ of *certiorari* to quash the same, which motion, on hearing, was on August 24, 1915, sustained by the court and the petition for *certiorari* dismissed, and it was further ordered that the decision and award of the Industrial Board be confirmed and that Alma M. Casparson, administratrix of the estate of Conrad Casparson, deceased, have and recover from the petitioners' \$3,500—the amount of the award made by said Industrial Board—and that she have execution therefor. From this order the petitioners in the *certiorari* proceeding prayed an appeal to the Appellate Court for the first district, which prayer for an appeal was denied by the court. Thereupon said petitioners moved the court to vacate and set aside the order denying said prayer for an appeal to the Appellate Court, which motion was denied and the petitioners by their counsel excepted. The court thereupon fixed the amount of the bond to review said judgment, said bond to be filed

within thirty days, and ordered that the petitioners be allowed sixty days within which to file their bill of exceptions.

“The respondent bases his action in denying an appeal to the Appellate Court on the provisions on the *clause (f) of section 19* of the Workmen’s Compensation Act, as amended in 1915, which is as follows: * * * (p 29, ante).

“The relators contend that under the law an appeal lies to the Appellate Court from final orders and judgments of the Circuit Courts in all suits and proceedings at law, except those reviewable directly by the Supreme Court, under and by virtue of section 8 of the Appellate Court Act (Hurd’s Stat. 1913, p. 681), as supplemented and modified by sections 91 and 118 of the Practice Act (Hurd’s Stat. 1913, pp. 1873, 1878); that a certiorari proceeding is a common law action, and an appeal lies to the Appellate Court from all judgments and final orders entered therein unless some question is involved which gives the Supreme Court jurisdiction of such appeal. Accordingly it is claimed that clause (f) of section 19 of the amendment to the Workmen’s Compensation Act above set out is in violation of and in conflict with section 29 of article 6 of the Constitution of 1870, which is as follows: ‘All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, powers, proceedings and practice of all courts, of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such courts, severally, shall be uniform.’ The argument is, that a statute which seeks to deny the right to an appeal to the Appellate Court from the final orders and judgments of the Circuit Courts of this state in certiorari proceedings which are instituted to review the records, orders, etc., of inferior tribunals other than the said Industrial Board, is in violation of and in conflict with said section 29 of article 6 of the Constitution.

“Section 11 of article 6 of the Constitution provides that after the year 1874 Appellate Courts of uniform organization and jurisdiction may be created in districts formed for that purpose, ‘to which such appeals and writs of error as the General Assembly may provide may be prosecuted from Circuit and other courts.’ Section 12 provides that the Circuit Courts shall have original jurisdiction of ‘all causes in law and equity.’ In pursuance of the provisions contained in said Section 11 the legislature passed an act in 1877 establishing Appellate Courts. Section 8 of that Act, as amended in 1887, provides: ‘The said Appellate Courts created by this Act shall exercise appellate jurisdiction only, and have jurisdiction of all matters on appeal, or writs of error from the final judgments, orders or decrees of any of the Circuit Courts, or the Superior Court of Cook county, or County Courts, or from the City Courts in any suit or proceeding at law, or in chancery, other than criminal cases, not misdemeanors, and cases involving a franchise or freehold or the validity of a statute (Hurd’s Stat. 1913, p. 681). By section 1 of the Practice Act of 1907, it is provided that ‘appeals shall lie to and writs of error from the Appellate Court or Supreme Court, as may be allowed by law, to review the final judgments, orders or decrees of any of the Circuit Courts, the Superior Court of Cook county, the County Courts or the City Courts and other courts from which appeals and to which writs of error may be allowed by law, in any suit or proceeding at law or in chancery. Appeals or writs of error in this section allowed shall be subject to the limitations by this Act provided and to the conditions imposed by law’ (Hurd’s Stat. 1913, p. 1873). The limitations and conditions thus referred to are contained in section 118 of the same Act, which provides that ‘appeals from and writs of error to Circuit Courts, the Superior Court of Cook county, the Criminal Court of Cook county, County Courts and City Courts, in all criminal cases below the

grade of felony shall be taken directly to the Appellate Court, and in all criminal cases above the grade of misdemeanors and cases in which a franchise or freehold or the validity of a statute or a construction of the Constitution is involved, and in cases in which the validity of a municipal ordinance is involved and in which the trial judge shall certify that in his opinion the public interest so requires, and in all cases relating to revenue, or in which the state is interested, as a party or otherwise, shall be taken directly to the Supreme Court' (Hurd's Stat. 1913, p. 1878).

"Generally speaking, it appears from the foregoing Acts that the legislature has conferred upon the Appellate Court jurisdiction in all appeals from the Circuit Courts, except in certain classes of cases.

"Among other cases relied on by the petitioners in this proceeding is *Sixby v Chicago City Ry. Co.*, 260 Ill. 478, in which we held that section 20 of the Municipal Court Act, which required the Supreme Court and the Appellate Court to take judicial notice of the rules of the Municipal Court, is contrary to section 29 of article 6 of the Constitution for the reason that the Supreme Court and Appellate Court are not required to take judicial notice of the rules of any other court than the Municipal Court, and that the section, therefore, was lacking in the uniformity of procedure and practice required by the Constitution for such enactments. In *Hoffman v Paradis*, 259 Ill. 111, it was held that the provision of the Municipal Court Act which requires writs of error to reverse judgments of the Municipal Court in fourth class cases to be sued out within thirty days from date of the entry of the judgment is in conflict with section 29 of article 6 of the Constitution. For the same reason the section of the Municipal Court Act which requires writs of error to review judgments for taxes in fourth class cases to be sued out of the Appellate Court was held unconstitutional in *People v Hibernian Banking Ass'n*, 245 Ill. 522, be-

cause under the general Practice Act writs of error to review judgments for taxes entered by any court other than the Municipal Court are required to be sued out of this court. In *People v Cosmopolitan Fire Ins. Co.*, 246 Ill. 442, it was held that section 25 of the Municipal Court Act, in so far as it authorized writs of error from the Appellate Court to the Municipal Court in cases relating to the revenue or where the state is interested, as a party or otherwise, was unconstitutional and such writs of error must be sued out of the Supreme Court under section 118 of the Practice Act. In all of these cases there was an attempt by the legislature to prescribe a procedure in reviewing suits at law from the Municipal Court different from the procedure for the review of similar suits from other but similar courts of record, and there is a marked distinction between such cases and cases arising in purely statutory proceedings, in which the legislature may provide for an appeal or review and the manner thereof, or may provide that there be no appeal or review.

“There would be great force in the contention of the petitioners if the writ of certiorari that may be issued by the Circuit Court in cases arising under the Workmen’s Compensation Act were the common law writ of certiorari. So far as the writ issued in this case is concerned, it was the common law writ and was issued by the court under its common law powers, as it was issued before the amendment to the Workmen’s Compensation Act went into effect. In *Courter v Simpson Construction Co.*, 264 Ill. 488, it was held that Circuit Courts have jurisdiction to issue the common law writ of *certiorari* to review the decisions of the Industrial Board provided for in the Workmen’s Compensation Act. After the writ had been issued, and before the Circuit Court rendered its decision, the amendment embraced in clause (f), *supra*, went into effect, and, if valid in its provisions as to reviewing the decisions of the Circuit Courts, must govern, in this case the same as if the Circuit Court had is-

sued a writ of certiorari to the Industrial Board under the provisions of the Act. There can be no vested right in any particular remedy or any special mode of administering it. *Dobbins v First Nat. Bank of Peoria*, 112 Ill. 553; *Woods v Soncy*, 106 Fid. 407.

“There is no question but that the legislature has the power, in a purely statutory proceeding, to provide whether an appeal in such proceeding shall be taken to the Supreme Court or Appellate Court (*Allerton v Hopkins*, 160 Ill. 448). In that case it is said, on page 453 of the opinion, quoting from the case of *Hall v Thode*, 75 Ill. 173: ‘These proceedings are purely statutory, having no vigor outside of the statute, and it is an unvarying principle that the requirements of the statute must govern and control them. By section 123 of chapter 46, title “elections,” (Rev. Stat. 1874), it is provided:

“ ‘In all cases of contested elections in the Circuit Courts or County Courts appeals may be taken to the Supreme Court in the same manner and upon like conditions as is provided by law for taking appeals in cases in chancery from the Circuit Courts.’ Here is a specific remedy provided in a specific case—not one arising in the usual course of litigation, but exceptional. It is a familiar principle in such cases, where the organic or statute law has given specific remedy, that remedy must be pursued. In contested elections before a County Court the remedy, and the only one, to correct a supposed error in the judgment is by appeal, and this remedy can alone be invoked. This proceeding not being according to the course of the common law, but statutory, merely, must be governed by the law prescribed for such proceedings.’

“While it is true that the writ of certiorari is a common law writ and the Circuit Court derives its power, in some cases, to issue such writ not from the statute but in some cases, to issue such writ not from the statute, but the writ of certiorari may be issued in certain cases, and the proceedings and practice where the court issues the

writ in such cases are provided for, as, for instance, in the Justice and Constable Act (Hurd's Stat. 1913, p. 79), it is provided in paragraph 188 (p. 1535), that upon the return of said writ such proceedings shall be had thereon as in cases of appeal. 'The purpose of a common law writ of certiorari is to bring the entire record of an inferior tribunal before the court to determine whether such tribunal has proceeded according to law, and the trial is to be had solely from an inspection of the record. The court cannot consider any matter not appearing of record, and if the want of jurisdiction or illegality appear from the record the proper judgment is that the proceeding is quashed, but if the proceeding be regular the petition must be dismissed and the writ quashed, and these are the only judgments that can be entered in this procedure.' (*Sanmer v Union Drainage District*, 175 Ill. 575.) In the case of *People v Wilkinson*, 13 Ill. 660, it is said, on page 662 of the opinion, with reference to the power of Circuit Courts to issue writs of certiorari; 'It is a common law power and is vested in our Circuit Courts, which in this state are the highest courts of original jurisdiction and answer to the court of king's bench in England, unless it is taken away by statute. There is certainly no express statute which deprives these courts of this jurisdiction, nor is there any which takes it away by implication. It is true, we have a statute which provides for the issuing of a writ called a certiorari, but that writ can scarcely be said to have any analogy to the common law writ of the same name. The common law writ only removes the record of the inferior court, and upon that record, alone, can the questions be raised. The determination of the questions of fact by the inferior court are held conclusive, while our statutory writ removes the entire case into the Circuit Court and opens for re-examination all questions, both of law and fact. Indeed, it is but another mode of taking an appeal from the judgment of a justice of the peace to the Circuit Court

and it can only be directed to justices of the peace, while the common law suit, as we have seen, may be sent to all inferior tribunals and jurisdictions, whether they be courts of justice or tribunals of special and more limited authority, and whether an appeal be allowed from their determination or not.'

"When a writ of *certiorari* is issued by the Circuit Court to review the proceedings of the State Industrial Board under the provisions of clause (f) of section 19 of the Workmen's Compensation Act, the court has the power to *review all questions of law* presented by the record of the Industrial Board, or a *suit in chancery* may be commenced by any party in interest to review the decision of the Board only for errors of law appearing upon the record of said Board. The court may confirm or set aside the decision of arbitrators or committee of arbitration of Industrial Board. If the decision is set aside and the facts found in the proceedings before the Board are sufficient, the *court may enter such decision as is justified by law* or may remand the cause to the Industrial Board *for further proceedings*, and may state the questions requiring further hearing and give such other instructions as may be proper.

"It will thus be seen that the powers of the court in this proceeding are different from the powers of the court when the common law writ of *certiorari* has been issued, in which the court could only review the record of the proceedings and either dismiss the petition and quash the *certiorari* or quash the proceedings, as pointed out in *Sanner v Union Drainage District, supra*. 'In case a *suit in chancery* is brought in the Circuit Court, as provided in clause (f), *supra*, the duties and powers of the court therein prescribed are *different* from the powers and duties of the court in other chancery proceedings. In short, all proceedings under the Workmen's Compensation Act are purely and entirely statutory, and if a writ of *certiorari* is awarded by the Circuit Court or a suit in chan-

cery is commenced, the proceedings thereunder are not the same as in other similar suits but are *governed wholly by the statute* in question. Where in a special statutory proceeding one form of review is specifically given, all other forms of review are excluded. (*Allerton v Hopkins, supra; McCollum v Title & Trust Co.*, 203 Ill. 142; *Myers v Newcomb Drainage District*, 245 Ill. 140.)

“In statutory proceedings, the legislature has the power to provide how such cases shall be reviewed, if at all, and has provided that certain classes of cases shall be reviewed by the Supreme Court only. Among such cases are those arising under the Eminent Domain Act (*Metropolitan West Side El. R. R. Co. v Siegel*, 161 Ill. 638, and cases cited), also cases of contested elections. *Hart Bros. v West Chicago Park Comrs.*, 186 Ill. 464.

“For the reasons given we think the provisions in the Act in question are *constitutional*, and the writ for mandamus will be denied.”

(Writ Denied.)

Strom v Postal Telegraph Co.
271 Ill. Sup. 544.

February 16, 1916

MR. CHIEF JUSTICE FARMER delivered the opinion of the court.

“This is an appeal from a judgment of the Circuit Court of Will County against appellant and in favor of appellee for a personal injury. Appellee was employed by appellant as a lineman, and while climbing a telegraph pole in the course of his employment and upon the order of his foreman, fell and was injured. The negligence charged was that the pole was in a decaying condition and while appellee was climbing it, with iron spurs on his feet, the wood gave away and broke out, causing appellee to fall.

“The injury occurred in March, 1914, and the declaration alleged appellant was not operating under the Work-

men's Compensation Act of 1913. The general issue was pleaded to the declaration. The reason for taking the appeal direct to this court is the claim of appellant that the constitutionality of the provisions of the Workmen's Compensation Act abolishing the defense of assumed risk in case an employer engaged in any of the occupations enumerated in the statute shall elect not to provide compensation according to its provisions is involved. It is not denied that appellant was engaged in an occupation to which the Act applied, and it was admitted on the trial that it was not operating under the provisions of said Act.

“The only way in which it is claimed by appellant that the constitutionality of any part of the Workmen's Compensation Act was raised on the trial is, that it offered instructions, which the court refused, that an employee assumes all the risks which are the usual and ordinary incidents of the line of the employment in which he is engaged. The record shows these instructions were refused, and it is now argued that they should have been given unless the provisions of the Workmen's Compensation Act abolish the doctrine of assumed risk where the employer elects not to come under the provisions of the Act, and that by offering said instructions appellant raised the constitutionality of the Statute. Appellant concedes that this court has sustained the power of the legislature to abolish the defense of assumed risk, under the Workmen's Compensation Act of 1911, in three cases—*Deibeikis v Link-Belt Co.*, 261 Ill. 454; *Dietz v Big Muddy Coal Co.*, 263 *id.* 480; and *Crooks v Tazewell Coal Co.*, 263 *id.* 343—but contends that they were either not well considered cases or that they are distinguishable from this case. Those cases directly held that the rules of law relating to the defenses of contributory negligence, assumption of risk and the effect of the negligence of a fellow-servant were not established by the Constitution but by the courts, and the legislature had the power to

modify them or abolish them entirely. The same thing has been decided by the Federal courts and many state courts. It is therefore no longer an open question in this state, and if it be conceded that the question was raised in the trial court, we cannot permit it to be made a pretext for a direct appeal to this court where the question has been repeatedly decided by us and settled contrary to the contention of appellant.

“The cause will be transferred to the Appellate Court for the Second District.”

(Cause Transferred.)

Lauruszkza v Empire Mfg. Co., 271 Ill. Sup. 304.

CRAIG, J.

This was a proceeding under the Workmen's Compensation Act of 1911 to recover for the death of one George Lauruszkza. A petition was filed in the County Court for Winnebago county by Anna Lauruszkza and Thomas Lauruszkza, as sister and father, respectively, of the deceased, against the Empire Manufacturing Company and the Cyclone Blow Pipe Company to recover for injuries sustained by said George Lauruszkza in the course of his employment as the servant of the above named corporations, which resulted in his death. To this petition each of the companies filed a separate plea, alleging the unconstitutionality of the Workmen's Compensation Act by reason of certain irregularities in the passage of the Act. A hearing was had upon the issues raised by these pleas, which resulted in a finding in favor of the petitioners. The Cyclone Blow Pipe Company elected to stand by its plea, and therefore objected to and refused to participate further in the proceedings. The Empire Manufacturing Company joined in the arbitration and appointed an arbitrator. A hearing was had before the arbitrators, resulting in a finding that Anna Lauruszkza was entitled to recover of the Cyclone Blow Pipe Company the sum of \$1,200 as the personal representative of the deceased, in weekly payments of \$6 each, and that the Empire Manufacturing Company was exonerated from all liability.

Thereafter the matter came on to be heard on the petition of Anna Lauruszkza in the county court of that county for a lump sum settlement, to which due objection was interposed by the Cyclone Blow Pipe Company (hereinafter called plaintiff in error) both to the constitutionality of the Workmen's Compensation Act and the jurisdiction of the County Court to entertain the cause where the amount of the claim is in excess of \$1,000. A hearing was had on the petition and the court awarded

the petitioner \$1,200 as a lump sum settlement and the costs of the proceedings. Plaintiff in error preserved its exception to the judgment as entered, and has prosecuted this writ of error direct to this court on the ground that the constitutionality of the Statute is involved.

The two reasons urged for the reversal of the judgment are: (1) The unconstitutionality of the Workmen's Compensation Act of 1911; and (2) want of jurisdiction in the County Court to hear a case of this character when the claim for damages is in excess of \$1,000.

(1) Defendant in error has made her motion in this court to dismiss the writ of error, and the same has been taken with the case. The ground urged is that this court has no jurisdiction to entertain an appeal or writ of error in this class of cases by reason of the provisions of sections 122 and 123 of the County Court Act, Hurd's Stat. 1913, p. 713. Section 122 of that Act provides:

“Appeals may be taken from the final orders, judgments and decrees of the County Courts to the Circuit Courts of their respective counties in all matters except as provided in the following section, upon the appellant giving bond and security in such amount and upon such conditions as the court shall approve, except as otherwise provided by law. Upon such appeal the case shall be tried *de novo*.”

Section 123 provides that appeals and writs of error in proceedings for confirmation of special assessments, the sale of lands for taxes and special assessments, and in all common law and attachment cases, and those of forcible entry and detainer, may be taken to the Supreme and Appellate courts.

Sections 122 and 123 of the County Court Act must be read in connection with section 8 of the Appellate Court Act (Hurd's Stat. 1913, p. 681), which is as follows:

“The said Appellate Courts created by this Act shall exercise appellate jurisdiction of all matters of appeal,

or writs of error from the final judgments, orders or decrees of any of the Circuit Courts, or the Superior Court of Cook County, or County Courts, or from the City Courts in any suit or proceeding at law, or in chancery other than criminal cases, not misdemeanors, and cases involving a franchise or freehold or the validity of a statute. Appeals and writs of error shall lie from the final orders, judgments or decrees of the Circuit and City Courts, and from the Superior Court of Cook county directly to the Supreme Court in all criminal cases and in cases involving a franchise or freehold, or the validity of a Statute."

It is also necessary to consider in this connection sections 91 and 118 of the Practice Act (Hurd's Stat. 1913, pp. 1873, 1878), which are as follows:

"Sec. 91. Appeals shall lie to and writs of error from the Appellate or Supreme Courts, as may be allowed by law, to review the final judgments, orders or decrees of any of the Circuit Courts, the Superior Court of Cook county, the County Courts or the City Courts and other courts from which appeals and to which writs of error may be allowed by law, in any suit or proceeding at law or in chancery. Appeals or writs of error in this section allowed shall be subject to the limitations by this Act provided and to the conditions imposed by law."

"Sec. 118. Appeals from and writs of error to Circuit Courts, the Superior Court of Cook county, the Criminal Court of Cook county, County Courts and City Courts, in all criminal cases below the grade of felony shall be taken directly to the Appellate Court, and in all criminal cases above the grade of misdemeanors and cases in which a franchise or freehold or the validity of a Statute or a construction of the Constitution is involved; and in cases in which the validity of a municipal ordinance is involved and in which the trial judge shall certify that in his opinion the public interest so requires, and in all cases relating to revenue, or in

which the State is interested, as a party or otherwise, shall be taken directly to the Supreme Court.”

The Workmen’s Compensation Act in question makes no provision for any appeal from a judgment rendered by the court on a trial de novo when a hearing is had in either the Circuit Court or the County Court on an appeal to either of said courts from a decision of the arbitrators, as provided in section 10 of that Act.

In this respect the Statute is similar to the provisions of the Act of 1874, which revised the law in relation to the commitment and detention of lunatics. In *People v Gilber*, 115 Ill. 59, in construing the provisions of section 122 of the County Court Act, we held that no appeal would lie from the County Court to the Circuit Court on an inquest of sanity. This court, in construing the sections in question of these various acts, held in *Union Trust Co. v Trumbull*, 137 Ill. 146, and other like cases, that a proceeding in the County Court under the Act relating to assignments was not purely a statutory proceeding, but a chancery proceeding modified and regulated by statute, and therefore not appealable to the Circuit Court.

It has also been held in *Lee v People*, 140 Ill. 536, that a bastardy proceeding, while not a suit at common law, was clearly a proceeding at law and therefore not appealable to the Circuit Court.

In *Grier v Cable*, 159 Ill. 29, it was held that an appeal from a judgment of the County Court allowing or disallowing claims against the estate of a deceased should be taken to the Circuit Court, as such hearings were in no proper sense proceedings at law or in chancery.

In *Lynn v Lynn*, 160 Ill. 307, the court held that a proceeding in the County Court for the sale of lands of a decedent for the payment of debts was practically a chancery proceeding, and therefore not appealable to the Circuit Court. In *Groszglass v Von Berzen*, 220 Ill. 340, it was held that an application to the County Court to dis-

charge a debtor under the Insolvent Debtors Act, while not a suit at law, was a proceeding at law and not a purely statutory proceeding. In *Myers v Newcomb Drainage District*, 245 Ill. 140, this court had these sections of the Statute under consideration and held that the proceedings to organize a special drainage district under the Farm Drainage Act of this State was a statutory proceeding, and not a proceeding at law or in chancery, and that therefore the appeal from the County Court's order establishing such drainage district should be to the Circuit Court.

The reasons advanced for the holdings in the foregoing cases are applicable here. The working of the whole law under consideration shows that one of its objects was to provide a *speedy remedy* for the injured employee, or those dependent upon him for support, to recover the compensation due him under the provisions of the Act. Proceedings of this character were unknown to the common law or at the time sections 122 and 123 of the County Courts Act were enacted. County Courts and Circuit Courts have *concurrent jurisdiction* in the decision of *appeals* from the decision of the arbitrators, as provided for in section 10 of the Workmen's Compensation Act, and a *hearing de novo* may be had in such matters. It does not seem reasonable that it was the intention of the legislature to give a party two hearings *de novo* if he took his appeal from the decision of the arbitrators to the County Court, but only *one hearing de novo* if he took his appeal from such decision to the Circuit Court. Nor do we think it would be proper so to construe the Act.

In support of the first contention, plaintiff in error insists that it does not appear from the House and Senate journals that certain amendments, Nos. 1 to 23, inclusive, were printed before the final vote was taken on the Act, as required by the provisions of section 13, article 4, of the Constitution of this State. Substantially the same questions were urged to the constitutionality of the

passage of the Act and the same evidence offered in support thereof, in *Dragovich v Iroquois Iron Co.*, 269 Ill. 478, where we held the evidence insufficient to show that the Act was not constitutionally passed. The reasons for our decision sustaining the constitutionality of the Act are there fully set forth and need not be again repeated here. The decision in that case is conclusive on this question.

It is next urged that the County Court had no jurisdiction, under the Workmen's Compensation Act, in cases where the amount of the claim or judgment entered would be in excess of \$1,000. The jurisdiction of the County Court in such matters is derived from section 10 of the Workmen's Compensation Act of 1911, which provides:

"Any question of law or fact arising in regard to the application of this law in determining the compensation payable hereunder shall be determined either by agreement of the parties or by arbitration as herein provided.

"In case any such question arises which cannot be settled by agreement, the employer and employee shall each select a disinterested party and the judge of the County Court, or other court of competent jurisdiction, of the county where the injured employee resided or worked at the time of the injury, shall appoint a third disinterested party, such persons to constitute a board of arbitrators, for the purpose of hearing and determining such disputed questions of law or fact arising in regard to the application of the law in determining the compensation payable hereunder. * * * Provided that either party to such arbitration shall have the right to appeal from such report or award of the arbitrators to the Circuit Court or the court that appointed the third arbitrator of the county where the injury occurred by filing a petition in such court within twenty days after the filing of the report of the arbitrators, and upon filing a good and sufficient bond, in the discretion of the court, and upon such appeal the questions in dispute shall be heard de novo,

and either party may have a jury upon filing a written demand therefor with his petition." Laws 1911, p. 321.

Section 18, art. 6, of the Constitution provides that County Courts shall be courts of record and have original jurisdiction of all matters of probate, the settlement of estates, etc., and in proceedings for the collection of taxes and assessments, and such other jurisdiction as may be provided for by general law. Pursuant to this constitutional authority, the General Assembly passed a general law conferring upon County Courts concurrent jurisdiction with Circuit Courts in all that class of cases wherein justices of the peace have jurisdiction, where the amount claimed or the value of the property in controversy does not exceed \$1,000, and in all cases of appeals from justices of the peace and police magistrates. Hurd's Stat. 1913, c. 37, par. 95. But proceedings under Workmen's Compensation Acts are not of the class of cases of which justices of the peace have jurisdiction, and the provision quoted therefore has no application to the question whatever. Section 10 of the Workmen's Compensation Act confers upon the judge of the County Court of the county where the injured employee resided or worked at the time of injury, authority to appoint arbitrators for the purpose of hearing all disputed questions of law or fact arising under that Act, and then gives either party a right of appeal from the decision of such arbitrators to the Circuit Court or the court of the county that appointed the third arbitrator, where the cause is tried de novo. In so doing, we think it was clearly the intention of the legislature to confer upon the *County Court concurrent jurisdiction* with the Circuit Court in all matters arising under the Act. "All questions of law or fact arising in regard to the application of this law in determining the compensation payable hereunder" would *include the amount of compensation* to be awarded in cases properly coming within the provisions of this Act.

This contention of plaintiff in error is not well taken.

For the reasons given, the judgment of the County Court of Winnebago county will be affirmed.

(Judgment Affirmed.)

**Richardson v Sears, Roebuck & Co., No. 9790 Sup. Ct.
111 N. E. 85.**

December, 1915.

CRAIG, J.

Sears, Roebuck & Co., a corporation, appellee in this court, appealed to the County Court of Kankakee county from an award made against it and in favor of the appellant for compensation for the death of his intestate, Fred E. Smith, under the Workmen's Compensation Act of 1911. The County Court sustained a motion made by Sears, Roebuck & Co., the appellant in that court, to dismiss the proceeding on the ground that the Workmen's Compensation Act was unconstitutional. The appellee in the County Court thereupon appealed to this court.

Counsel for appellee in this court have made a motion to dismiss the appeal because the court is without jurisdiction to entertain it, contending that under the Statute the appeal should have been taken from the County Court to the Circuit Court. That motion was taken with the case. The same motion was made in *Lauruska v Empire Mfg. Co.*, No. 9919, 111 N. E. 82, which was a case arising under the same law, the Workmen's Compensation Act of 1911, and substantially the same reasons were assigned in support of the motion. We held in that case that the APPEAL was properly taken to this court. What was said in that case is decisive of the same questions here, and it need not be further considered.

The CONSTITUTIONALITY of the Act in question was fully considered and upheld in the case of *Dragovich v Iroquois Iron Co.*, 269 Ill. 478, where it was urged that the law was not constitutionally enacted for the same reasons that are urged by appellee in this court, and for which reasons the County Court dismissed the appeal to it from the arbitrators. The County Court was in error in holding the law unconstitutional and in dismissing the appeal to it, and the order of the County Court will be reversed and the cause remanded to that court for further proceedings consistent with this opinion.

(Reversed and Remanded.)

Lavin v Wells Bros. Co., 272 Ill. Sup. 609.**CARTWRIGHT, J.**

Thomas Lavin was employed by the Wells Bros. Company, a corporation, and suffered injuries from which he died on January 16, 1913. Martin Lavin, administrator of his estate, applied to the Superior Court of Cook county for the appointment of the third arbitrator to determine the question of his right to compensation, and the amount of the same, under the Workmen's Compensation Act of 1911. The court appointed an arbitrator and an award was made, from which the corporation appealed to the court. The cause was tried by the court without a jury, and there was a finding for the administrator and an order that the corporation should pay to him \$3,500, in equal weekly installments of \$8.61. From that judgment the corporation was allowed and perfected an appeal to the Appellate Court for the first district. The Appellate Court dismissed the appeal on the ground that the law did not allow an appeal from the judgment and therefore the court had no jurisdiction. The record has been brought to this court by certiorari.

The Appellate Court Act and the Practice Act provide for appeals from final judgments, orders or decrees in any suit or proceeding at law or in chancery, and the question whether an appeal will lie from the judgment of a court under the Workmen's Compensation Act depends upon whether the proceeding in the court is a suit or proceeding at law or in chancery. The term, "suit or proceeding at law or in chancery," includes every claim or demand in a court of justice which was known at the adoption of our Constitution as an action at law or a suit in chancery, and also all actions since provided for in which personal or property rights are involved of the same nature as those previously enforced by actions at law or in chancery, but does not include special statutory proceedings involving rights and providing remedies

which are not of the kind previously enforced either at law or in chancery. *Douglas v Hutchinson*, 183 Ill. 323. There was previous to the enactment of the Statute in question a liability of the employer to his employee for the negligence of the employer resulting in injury and damage which could be enforced by an action at law. The Statute gives the employer his CHOICE whether to accept its provisions extending that liability to all cases, or to forfeit substantial DEFENSES previously accorded to him by the law, leaving the legal liability as it was, but without those defenses. The Statute provides that upon acceptance its provisions shall be regarded as a part of the CONTRACT of hiring, and that the measure of liability of the employer for an injury shall be determined according to the provisions of the Act. The liability is a contract liability not different in its nature from any other liability arising out of contract. It is true that the right to the compensation fixed is a STATUTORY right, but it is not of any different character from the right to compensation for an injury within the limits of the law as it previously existed. It is a right to receive as compensation a sum of money fixed by the Statute, in such amounts and at such times as the court shall determine. A method is provided for the determination by arbitrators whether an injured employee suffered his injury while engaged in the line of his duty in his employment and determining the measure of liability of the employer. That is NOT A JUDICIAL proceeding, but the Statute provides for an appeal and a trial de novo in a court, and that provision is for a JUDICIAL remedy, which begins with the appeal to the court. *City of Aurora v Schoeberlein*, 230 Ill. 496; *Conover v Gatton*, 251 Ill. 587. The proceeding is of the same nature as any suit or proceeding at law for the purpose of fixing a liability and recovering money, and the result is either an order for the payment of money or the defeat of the claimant. The nature of the right, the method of proceeding, and the judgment are of the same

kind as in any other claim for money in a court of law.

In the case of *Lauruszka v Empire Mfg. Co.*, 271 Ill. 304, a writ of error was sued out of this court to the County Court and there was a motion to dismiss the writ, which was denied. The ground of the motion was that an appeal should have been taken to the Circuit Court, and in considering that question the right to an appeal was classed, under the Appellate Court Act and Practice Act, with various proceedings in which an appeal was allowed to the Appellate Court or Supreme Court, according to the questions involved. The opinion of the court was of such nature as to give the right of appeal to the Appellate Court, and by the same Statute a writ of error could be sued out of this court because the constitutionality of the Statute in question was involved.

The judgment of the Appellate Court is reversed, and the cause remanded to that court, with DIRECTIONS TO CONSIDER the errors assigned.

(Reversed and Remanded with Directions.)

WORKMEN'S COMPENSATION ACTS.

DIGEST OF DECISIONS

OPINIONS—EXTRACTS—NOTES

STATE OF ILLINOIS

SUPREME COURT
APPELLATE COURT
INDUSTRIAL BOARD

UNITED STATES

FEDERAL COURTS
HIGHEST STATE COURTS

ENGLAND

RULING CASES

For cross-references consult index.

ABBREVIATIONS.

- I. B.—Industrial Board, Bulletin No. 1. (Decisions 1913-1915.)
- B. W. C. C.—Butterworth's Compensation Cases. (England.)
- L. T. J.—Law Times Journal. (England.)
- K. B.—King's Bench.
- N. E.—North Eastern Reporter.
- N. W.—North Western Reporter.
- A.—Atlantic Reporter.
- P.—Pacific Reporter.
- S. E.—South Eastern Reporter.
- S. W.—South Western Reporter.

CONSTITUTION

Workmen's Compensation Act of Illinois—Valid. 149

Deibeikis v Link-Belt Company

Declaration of Public Policy.

No Vested Right in Common Law Rules.

Elective Feature.

Notes.

Acts of other states..... 151

Valid.

Federal Courts.

State Courts.

Iowa.

New York.

Ohio.

Ohio.

Indiana.

Texas.

Kansas.

Washington.

Maine.

Wisconsin.

Massachusetts.

Invalid.

Michigan.

New York.

Minnesota.

Montana.

Montana.

Texas.

Nevada.

Kentucky.

New Jersey.

Amendments to Constitutions..... 155

Hawkins v Bleakley..... 156

CONSTRUCTION..... 163

To be Liberal.

To Effect Dominant Purpose.

Extra-State Precedents.

§ 1 ELECTION..... 169

“Any employer may elect to provide and pay compensation according to provisions of Act.”

“Every employee shall be deemed to have accepted provisions of Act when employer so elects.”

§ 2 ELECTION..... 171

“Every employer conclusively presumed to have filed

notice of election to provide and pay compensation, who is engaged in any of enumerated extra-hazardous occupations, unless filing notice to the contrary."

Notices.

§ 3 OCCUPATION..... 174

"Occupations, enterprises or businesses declared to be extra-hazardous."

1.—"Building, maintaining, removing, repairing or demolishing of any structure."

2.—"Construction, excavating or electrical work."

3.—"Carriage by land or water and loading or unloading in connection therewith."

4.—"The operation of any warehouse or general or terminal store houses."

5.—"Mining, surface mining or quarrying."

6.—"Any enterprise in which explosive materials are manufactured, handled or used in dangerous quantities."

7.—"Any enterprise wherein molten metal, or explosive or injurious gases or vapors, or inflammable vapors or fluids, or corrosive acids, are manufactured, used, generated, stored or conveyed in dangerous quantities."

8.—"Any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, guarding, use or the placing of machinery or appliances, for the protection and safeguarding of the employees or the public therein."

"Not to be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, etc."

§ 3 DEFENSE..... 180

"In action to recover damages against employer engaged in enumerated extra-hazardous occupations,

rejecting Act, it shall not be a defense, that:

- 1.—“The employee assumed the risks of the employment;
- 2.—“The injury or death was caused in whole or in part by the negligence of a fellow servant; or
- 3.—“The injury or death was proximately caused by the contributory negligence of the employee.”

Safety Acts—Violation of—Common law defenses barred.

§ 4 “EMPLOYER”..... 208

- 1.—“Term shall be construed to mean: The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.”
- 2.—“Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable corporations or associations, who has any person in service or under any contract for hire”—accepting by filing notice or by presumption from extra-hazardous character of occupation.

§ 5 “EMPLOYEE”..... 209

- 1.—“Term to be construed to mean: Every person in service of state and public bodies enumerated in § 4, 1st par.
 “Except any official of state or such public body.”
 “Except any such employee to whom pension is payable from pension fund.”
 “Except contractor with such public body.”
- 2.—“Every person in the service of another under any contract of hire, express or implied, oral or written.”

Alien.

Included.

Minor.

Included. “Legally permitted to work under laws of State”—Same power to contract, receive payments and give quittances therefore as adult.

Excluded by laws of United States—held to be exclusive.
exclusive.

Extra-territorial effect.

- § 6 DAMAGES..... 221
 “No common law or statutory right to recover damages for injury or death of employee covered, while engaged in the line of his duty, available against employer—other than compensation provided by Act.”
- § 7 ACCIDENTAL INJURY..... 186
 “Accidental injuries sustained by employee, arising out of and in the course of the employment.
- § 7 COMPENSATION 122
 “Amount of compensation which shall be paid for injury to employee resulting in death.”
 (a)—“Leaving widow, child or children whom he was under legal obligation to support at time of injury.”
 (b)—“Leaving widow, child, parent, grandparent or other lineal heir, to whose support he had contributed within four years previous to time of injury.”
 (c)—“Leaving collateral heirs dependent upon his earnings at time of injury.”
 (e)—“Installments—equal to one-half average earnings to be paid at same intervals as wages or earnings were paid.”
 (f)—“Payments to be made at employer’s option to personal representative or beneficiaries—in shares according to distributee’s respective dependency.”
- § 8 COMPENSATION..... 226
 “Amount of compensation for injury not resulting in death.”
 (a)—“First aid; medical, surgical and hospital services; not longer than eight weeks; not exceeding \$200.”

(b)—“Temporary total incapacity over six working days.”

(c)—“Serious and permanent disfigurement to hand, head or face.”

(d)—“Partial permanent incapacity.”

“Returning to the employment in which injured. Notice within 18 months.”

Injuries in schedule of losses:

Thumb, finger, phalange.

Toe, phalange.

Permanent and complete losses:

Hand.

Arm.

Foot.

Sight of an eye.

Total and permanent disability:

Loss of both hands, both arms, both legs, both eyes, any two thereof.

Not excluding other cases.

(f)—“Complete disability, wholly and permanently incapable of work.”

(g)—“Death from injury before total payments made—remainder to be paid to beneficiaries.”

(h)—“Compensation in no event to exceed fifty per centum of average weekly wage or \$12 per week—Payments not to extend over eight years, except in case of complete disability.

Conservator or guardian for incompetent employee.

Installments payable at same intervals as wages, or weekly.

§ 9 LUMP SUM..... 239

“Any employer, employee or beneficiary who shall desire to have compensation, or any unpaid part thereof, paid in a lump sum, may so petition the Industrial Board.”

“If it appears to the interest of the parties, the Board may order the commutation of the compensation to an equivalent lump sum, equaling the total sum of the probable future payments, capitalized at their present value calculated at three per centum per annum with annual rests.”

“In cases indicating complete disability, six months to expire before entertainment of petition.”

“Lump sum award may be rejected by either party except under § 7 or par. (e) of § 8, total and permanent disability.”

§ 10 COMPUTATION..... 240

(a-g)—“Basis for computing compensation to be annual earnings if continuously employed—Same class of employment—Working days of year—Average daily earnings—Operating part of year—Day’s work.”

(h)—“Subsequent injury.”

§ 11 RESPONSIBILITY.

Compensation to be “measure of responsibility.”

§ 12 EXAMINATION..... 243

“Employee required, if requested, to submit himself for examination to a duly qualified medical practitioner or surgeon selected by employer.”

“If employee refuses to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended.”

§§ 13-16 INDUSTRIAL BOARD..... 243

§ 15 “Shall have jurisdiction over operation and administration of Act.”

§ 16 “May make rules and orders which shall be deemed *prima facie* reasonable and valid.”

§ 16 "Process and procedure shall be as simple and summary as reasonably may be."

"Board or any member thereof or any arbitrator designated by Board shall have power to administer oaths, subpoena and examine witnesses, issue subpoenas duces tecum and examine and inspect books, records, documents, places, or premises."

Board shall have power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any service performed.

§ 18 "Board to determine all questions arising under Act."

§ 19 PROCEDURE..... 250

(a) "Disputed questions of law and fact."

"Where parties fail to reach an agreement, Board shall appoint an arbitrator, or, in claims for permanent incapacity or death, a chairman of a committee of arbitration, at request of either party, depositing twenty dollars."

(b) Hearing in vicinity after 10 days' notice.

"Decision of arbitrator or committee shall become decision of Board, unless petition for review is filed within fifteen days and agreed statement of facts or stenographic report within twenty days.—Authentication—extension.

(c) "Physical examination by appointee of Board."

(d) "Compensation of employee persisting in insani-
tary or injurious practices which tend to imperil or
retard recovery, or refusing to submit to reasonably
essential treatment to promote recovery, may be re-
duced or suspended."

(e) "Board promptly to review decision—questions of
law and fact—additional evidence."

(f) "Decision of Board, acting within its powers, and

arbitrators, where not reviewed, shall in the absence of fraud, be conclusive unless reviewed by court."

(1) "Circuit Court shall by writ of certiorari have power to review all questions of law presented by record—Suit in chancery."

"Judgments, orders and decrees of Circuit Court shall be reviewed only by Supreme Court."

"Decision of any two members of Board or committee shall be considered that of body."

"Circuit Court may enter judgment on certified copy of decision of Board, and tax costs and attorneys' fees where compensation not paid."

"Review by Board of award or agreement in eighteen months."

§ 22 "Agreement within seven days after injury presumed fraudulent."

§ 24 NOTICE OF ACCIDENT..... 266

"No proceedings to be maintained unless notice of accident given to employer as soon as practicable, but not later than thirty days after accident—Inaccuracy not bar where no prejudice—Contents—Where facts are known."

§§ 25-27 INSURANCE, ETC..... 266

§ 29 THIRD PARTY..... 266

Liable for damages—Subrogation.

§ 31 CONTRACTOR..... 267

Contracting to do or have work done of extra-hazardous character, failure to insure payment of compensation, liability.

Fraudulent schemes to evade responsibility.

CONSTITUTION.

ILLINOIS.

Workmen's Compensation Act of Illinois is in harmony with and not repugnant to the Constitution of the State and the Constitution of the United States.

Deibeikis v Link Belt Company, 261 Ill. Sup. 454; 104 N. E. Rep. 211.

Dietz v Big Muddy Coal Company, 263 Ill. Sup. 480; 105 N. E. 289.

Crooks v Tazewell Coal Company, 263 Ill. Sup. 343; 105 N. E. 132.

Courter v Simpson Construction Company, 264 Ill. Sup. 488; 106 N. E. 350.

Dragovich v Iroquois Iron Company, 269 Ill. Sup. 479.

Frey v Kerens-Donnewald Coal Company, 271 Ill. Sup. 121.

Uphoff v Industrial Board, 271 Ill. Sup. 312.

Strom v Postal Telegraph Company, 271 Ill. Sup. 544.

People v McGoorty, 270 Ill. Sup. 610.

Przykopenski v Citizens Coal Co., 270 Ill. Sup. 275.

Richardson v Sears Roebuck & Co., 271 Ill. Sup. 325.

Devine v Delano, 272 Ill. Sup. 166.

Lauruszkas v Empire Mfg. Co., 271 Ill. Sup. 304.

Bell v Toluca Coal Co., 272 Ill. Sup. 576.

Lavin v Wells Bros. Co., 272 Ill. Sup. 609.

Act valid—Not exercise of police power—Declaration of public policy—Elective feature—Not compulsory—Nor class legislation—Nor deprivation of property—Nor of right of trial by jury—Defenses at common law abrogated—Search and seizure.

Deibeikis v Link-Belt Company, 261 Ill. Sup. 454; Ann. Cas. 1915 A. 241.

“The right to trial by jury as heretofore enjoyed shall remain inviolate.”

Constitution of 1870, Art. II, Sec. 5.

Standredge v Chicago City Ry. Co., 254 Sup. 524.

People v Rodenberg, 254 Sup. 386.

“No person shall be deprived of life, liberty or property without due process of law.”

Constitution of 1870, Art. II, Sec. 2.

Law denying right of employer and employee to contract in regard to wages, unconstitutional.

Chicago, W. & V. Coal Co. v People, 214 Sup. 421.

Matthews v People, 202 Sup. 389.

Miller v People, 117 Sup. 294.

Eamsay v People, 142 Sup. 380.

Ritchie v People, 155 Sup. 98.

Glover v People, 201 Sup. 545.

Sweet v People, 200 Sup. 536.

Contra, Ritchie v People, 244 Sup. 507.

No vested interest or right of property is conferred by any rule of the common law.

Second Employers' Liability Cases, *Mondou v New York, N. H. & H. R. Ry. Co.*, 223 U. S. 1; 56 L. E. 327; 38 L. R. A. (N. S.) 44; 32 Sup. Ct. 169.

Consolidated Coal Co. v Illinois, 185 U. S. 203.

A public interest arises in the manner in which property is used.

Munn v Illinois, 94 U. S. 113.

“The power of the legislature to pass laws for the promotion of public welfare and safety, the preservation of good order and the prevention of fraud, deceit and imposition, has always been recognized in Illinois.”

People v Weiner, 271 Ill. Sup. 74.

People v Freeman, 242 *id.* 373.

People v Schenck, 257 *id.* 384.

The police power is that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety and welfare of society.

Town of Lake View v Rose Hill Cemetery Co.
70 Ill. Sup. 191.

A rightful exercise of the police power is not a violation of the fourteenth amendment even though property interests are affected.

People v Weiner, 271 Ill. Sup. 74.

Powell v Pennsylvania, 127 U. S. 678.

Booth v Illinois, 184 *id.* 425.

Hammond v Montana, 233 *id.* 331.

Certiorari to Supreme Court: Clause (f) of § 19, Act of 1913, providing for review as to questions of law by certiorari from the Supreme Court, conflicts with Art. 6, § 2, of the State Constitution, and is invalid.

Courter v Simpson Construction Co., 264 Ill. Sup. 488; 106 N. E. 350.

People v McGoorty, 270 Ill. Sup. 610.

OTHER STATES.

Constitutional questions involved and considered in Workmen's Compensation Acts of various states:—

Police power of state.

Delegation of judicial power.

Right of trial by jury.

Freedom of contract.

Equal protection of the law.

Class legislation.

Deprivation of property without due process of law.

Right of action at common law.

Vested right in common law rules.

Right of appeal.

Unreasonable search and seizure.

Mode of passage.

Special constitutional provisions.

Workmen's Compensation Acts in the following states declared *valid* in essential features :

FEDERAL COURTS.

- Ohio: *Jeffery Manufacturing Company v Blagg*, 235 U. S. Rep. 571.
Iowa: *Hawkins v Bleakley*, 220 Fed. 378 (op. post).
Washington: *Stoll v Pacific Coast S. S. Co.*, 135 Fed. 169. (Numerous citations.)

HIGHEST STATE COURTS.

- Indiana: Emp. Liab. Act. *Indiana Quarries Co. v Farmer*, 110 N. E. 549.
Kansas: *Shade v Ash Grove Lime & Co.*, 93 Kans. 257; 144 Pac. Rep. 249.
Maine: *Dirkin v Great Northern Paper Co.*, 110 Me. 374; 86 Atl. Rep. 320.
Massachusetts: Opinion of Justices, 209 Mass. 607; 96 N. E. 308; *Young v Duncan*, 218 Mass. 346, 107 N. E. 443; *Turnquist v Hannon*, 219 Mass. 560, 107 N. E. 443.
Michigan: *Jendrus v Detroit Steel Products Co.*, 144 N. W. 563; *Wood v City of Detroit*, 155 N. W. 592.
Minnesota: *Matheson v Minneapolis Street Ry. Co.*, 126 Minn. 286, 148 N. W. 71-563; *State v District Court*, 128 Minn. 150, 148 N. W. 71.
Montana: *Cunningham v North Western Imp. Co.*, 44 Mont. 180, 119 Pac. 554.
Nevada: *Lawson v Halifax-Tonopah Mining Co.*, 135 Pac. 611.
New Jersey: *Sexton v Newark District Telegraph Co.*, 84 N. J. L. 85, 86 Atl. 451, affd. 91 Atl. 1070; *Huyett v Penna. Ry. Co.*, 92 Atl. 8; *O'Connell v Magneto Co.*, 85 N. J. L. 64, 89 Atl. 922; *Troth v Millville Bottle Works*, 91 Atl. 1031.
New York: *Jensen v Southern Pac. Co.*, 109 N.

E. 600, 167 App. Div. 945; *Moore v Lehigh Valley R. Co.*, 154 N. Y. S. 620. (See post.)

Ohio: *State ex rel Yapple v Creamer*, 85 Oh. St. 349, 39 L. R. A. (N. S.) 694, 97 N. E. 602; *Porter v Hopkins*, 109 N. E. 629; *Jeffery Manufacturing Co. v Blagg*, 108 N. E. 465.

Texas: *Memphis Cotton Oil Co. v Tolbert*, 171 S. W. 309; *Missouri & Ry. Co. v Scott*, 143 S. W. 710; *Consumers Lignite Co. v Grant*, 181 S. W. 20; *Middleton v Texas Power & Light Co.*, 185 S. W. 556.

Washington: *State ex rel Davis-Smith Co. v Clausen*, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466; *Stoll v Pacific Coast S. S. Co.*, 135 Fed. 169; *State v Mountain Timber Co.*, 75 Wash. 581, 135 Pac. 645; *State v City of Seattle*, 73 Wash. 396, 132 Pac. 45-685.

Wisconsin: *Borgnis v Falk Co.*, 147 Wis. 327, 133 N. W. 209, 37 L. R. A. (N. S.) 489; *City of Milwaukee v Miller*, 144 N. W. 188; *Mellen Lumber Co. v Industrial Com. of Wis.*, 154 Wis. 114, 142 N. W. 187, Ann. Cas. 1915, B. 1000.

Workmen's Compensation Acts in the following states declared *invalid*:

New York: Not proper exercise of police power, imposing liability upon employer in absence of negligence on his part.

Ives v South Buffalo Ry. Co., 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. 162, Ann. Cas. 1912, B. 156, 174 rev. 140 App. Div. 921.

Montana: Allowing double recovery.

Cunningham v North Western Improvement Co., 44 Mont. 160, 119 Pac. 554.

Texas: Compulsory on employee.

Middleton v Texas Power & Light Co., 178 S. W. 956.

Kentucky: Contravening constitutional inhibition against limiting amount of recovery for injuries to person, resulting in death.

Kentucky State Journal v Workmen's Compensation Board, 161 Ky. 562, 170 S. W. 1166-437.

"The New York court held the law invalid, as imposing the ordinary risks of a business (which under the common law the employee was held to assume) on the employer. The court states one of the premises on which it proceeds as follows: 'When our constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another.' But that rule was not of universal application. At common law one may sustain such relation to the inception of an undertaking that he will be held liable for negligence in the progress of the enterprise, even though he has no part or connection with the negligent act itself which caused the injury. * * * The position in the line of causation which employers sustain in modern industrial pursuits is, of course, the basic fact on which employers' liability laws rest."

State v Creamer, 85 Oh. St. 349.

“It is not meant here to be asserted that this police power is above the Constitution, or that everything done in the name of the police power is lawfully done. It is meant only to be asserted that a law which interferes with personal and property rights is valid only when it tends reasonably to correct some existing evil or promote some interest of the State, and is not in violation of any direct and positive mandate of the Constitution. The clause of the Constitution now under consideration was intended to prevent the arbitrary exercise of power or undue, unjust, and capricious interference with personal rights; not to prevent those reasonable regulations that all must submit to as a condition of remaining a member of society.”

State v Clausen, 65 Wash. 156; See *Cooley Const. Lim.* § 156; *Story Const.* § 1935.

Workmen's Compensation Acts authorized by *Constitutional amendments* in Arizona, California, New York, Ohio and Vermont.

Such New York Act of 1914 valid.

Const. Amdt. Nov. 4, 1913.

Jensen v Southern Pacific Co., 109 N. E. 600.

See *Miller v Pillsbury*, 128 Pac. 327.

“In the case of *Jensen v Southern Pacific Co.*, 167 App. Div. 945, 152 N. Y. S. 1120, and the *Burns* case, 167 App. Div. 945, 152 N. Y. S. 1101, and the *Walker* case, 167 App. Div. 945, 152 N. Y. S. 1147, we held the Workmen's Compensation Act to be constitutional.”

Moore v Lehigh Valley R. Co., 154 N. Y. S. 620.

Act constitutional, though depriving employees of common law rights.

Jensen v Southern Pac. Co., 215 N. Y. 514, 109 N. E. 600.

Moore v Lehigh Valley R. Co., 154 N. Y. S. 620.

Hawkins v Bleakley, U. S. Dist. Ct., Iowa.
220 Fed. Rep. 378.

Opinion by District Judge SMITH McPHERSON.

“This is an action by a bill in equity exhibited by complainant against State Auditor Bleakley and State Industrial Commissioner Garst seeking to enjoin the enforcement of Chapter 147 of the Laws of the Thirty-fifth General Assembly of Iowa (1913) known as the Employers’ Liability or Workmen’s Compensation Law. The complainant, being an employer of labor and within the terms of the Statute, contends that the Statute is unconstitutional and void. The defendant moves to dismiss the case, equivalent to a demurrer, on the grounds that the bill is without equity and that the Statute is valid. I do not care to prepare a formal opinion, and I make known my views as orally stated.

“All thoughtful persons agree that present conditions call for legislative, judicial or economic relief, one or all. Enterprises, such as railroads, street car lines, interurban lines, manufacturing plants of all kinds, with rapidly moving machinery, usually hazardous, with the dangerous invisible electric current of high voltage, the agency of steam, geared with cogwheels, belts, pulleys, and other appliances, are killing and crippling thousands and thousands of persons every year. This is so even when the employees are sober, attentive and watchful, and is materially increased when such persons, or some of them, are negligent. This means poverty and distress, and is followed by charities, and too often filling the poorhouses and sanitariums. The man with an eye gone, a leg or arm off, or otherwise physically or mentally impaired, has but a limited or no chance in life. This burden sometimes falls upon the injured person alone, sometimes on the wife, children, or parents, and often on the general public by increased taxation. Presidents, congressmen, legislatures and men of eminence for years have been urging

actual reforms in these matters, and the employees have been insisting upon relief. All persons know these things to be so, and the literature and debates for years have been devoted to the query as to the solution and remedy. The courts have not been lagging so much as retrograding in dealing with the subject. The time of the courts is consumed in listening to the harrowing stories sometimes of truth and sometimes of perjury. Claim agents are busy from the hour of death or injury in locating and preserving the testimony that the corporation may be protected. The friends and lawyers and agents of the dead and injured are equally industrious. We often see advertisements in the press of 'witnesses wanted to the occurrence.' We have new words in the dictionary, but the new words 'snitches' and 'ambulance chasers' are of the simple and well known language. Verdicts must be for twice the fair amount to be awarded as damages, so as to allow the 'contingent fee,' or the injured man, his widow or children, must accept half the sum justly due. And these results are only obtained after years of litigation. Sickness, unavoidably out of town, urgent business in other courts, prolong the litigation. When judgment is at last obtained in favor of one side or the other, appeals, certiorari, mandamus, and writs of error, one or all, are sought, and then sometimes reversals, and then other delays. Sometimes verdicts are returned, and later on it is ascertained that the testimony was to meet the law of the case. Sometimes the verdicts are returned for only part of the sum that should have been awarded, and sometimes the verdict is followed by getting well so speedily as to be termed almost miraculous. So that, regardless upon which side the greater wrongs occur, a question no one can decide, all ought to concede that which is the truth, that the best the courts can do in many cases is frailty itself. Something like 30 per cent of the time of the courts is taken with these cases, adding enormously to the expense of the tax payers. So that if there is to be

a remedy for these evils, and that remedy is limited to the courts, reforms more than paper reforms must be brought about, and such real reforms are well-nigh hopeless, if the past 30 years of judicial history is to be a criterion.

“To meet the burdens created by death and injury thus brought about by public taxation, is to argue the question by idle talk. The people are groaning under taxation.

“Damages not easily avoided must go into the cost of production and be borne by the consumers, and those readily avoided in some instances at least should be borne by him or it responsible therefor. But that aids but little because the question as to who is responsible is often a complicated and difficult question and one not easily solved, and often solved by well-nigh a guess.

“Nearly every foreign country has attempted to solve it by legislation, and twenty or more of the United States within a few years have enacted statutes for the purpose of affording a remedy. Some of these statutes have been sustained as valid legislation. The objections usually urged are those against infringing upon the liberty of contract, denying due process of law, and denying the right of trial by jury. The clause in our State Constitution providing that the right of trial by jury shall remain inviolate presents a serious and important question. It is likewise an humorous objection, because a trial by jury is seldom asked or desired by the employer of labor. But waiving the humorous phases, it is both important and necessary to at least briefly consider the constitutional objections. But in doing this I shall not review the great decisions on constitutional law, but will be content by analyzing this Statute. This is sufficient because all agree that the constitutional provisions can be waived. They are forced on no one, if both agree to waive them, and this waiver can be by writing, or verbally done, or done by common consent or acquiescence.

“The statute is one of much verbiage and prolixity of 51 lengthy sections. But once and for all it can be stated, and correctly stated, that under this Statute every employer and every employee can have his day in court, and can have due process of law, and can have a jury trial, if one or all are desired. No one of these constitutional rights is denied. It is true that such can be had with some limitation on what has heretofore existed, which limitations will presently be noted. Whether the parties are denied the full scope of the so-called liberty of contract is no longer argued with much seriousness by reason of the decision by the Supreme Court of the United States in the case from this state of *Chicago, Burlington & Quincy Railroad v McGuin*, 219 U. S. 549, 31 Sup. Ct. 259, 55 L. Ed. 328.

“The first 22 sections of this lengthy Statute fix the liability of the employer and the rights of the employee. A scale of compensation is fixed and made certain. Each party can come within the Statute or remain outside of the Statute. Each party has his election. Many of the states for many years have had statutes fixing the liability with precision in cases of death, and in no instance has any court held such statute invalid. And why a statute cannot fix with certainty the damages to be allowed in case of the loss of an arm, leg, eye or other injury, is not perceived, and counsel fail to state any legal or constitutional objection thereto.

“But it is argued that if the employer fails to elect to come within the Statute and have the case tried and determined as heretofore, the employer cannot urge the defense of assumption of risks by the employee or contributory negligence. And yet each of these defenses first crept into the law by slight recognition and then grew and developed by judicial decisions without the aid of legislation and it cannot be so that, simply because such became recognized as the law by judicial decisions, they cannot be abridged or denied by legislation. The same

is true of the doctrine of fellow servants. That doctrine never was affirmed by legislation except impliedly, and impliedly only because of legislative action denying such defense as to railroad and other hazardous employments. All lawyers know that the court-made rule in Iowa, for a long time maintained but against the decided weight of authority, is that the injured person must show that he was without fault or negligence. Most of the appellate courts hold otherwise, holding that it is a defense only. United States Courts sitting in Iowa as well as in all the other states, hold that it is defensive only and requires the defendant to show by a preponderance of testimony that the injured man or deceased contributed to the injury. For a long time many of the states had the rule of comparative negligence, and now in some instances Iowa has such a rule. But in none of these matters is there any vested right for or against any of these defenses or burdens placed upon the plaintiff. They closely belong to or inhere in police regulations for the preservation of life and limb and are within the legislative powers of the state, and in inter-state commerce matters within the power of congress. The decisions of Appellate Courts, the Supreme Court of the United States included, are recent and well known by the profession. It is true that if the parties elect to come within the Statute they must do so by notice or acquiescence. This is attended with some formalities, but that is a question of detail and policy alone belonging to the legislature and outside the province of the courts to either regulate or condemn.

“The next 18 sections of the Statute relate to the appointment of a commissioner, an office now held by the defendant Garst. Under his direction arbitrations are brought about. Arbitrations existed at common law and they are allowable under the Iowa statute. The conclusions and award of the arbitrator can be enforced by judicial proceedings. There is nothing new about all this.

And these arbitrations are agreed to under this Statute either by specific agreement or by acquiescence.

“The remaining nine sections of the Statute relate to insurance to cover liability for damages. The Chicago, Burlington & Quincy Railroad Company for years had a scheme of insurance which if resorted to by the injured employee, was a bar to recovery by an action in court. Finally that scheme was condemned by Iowa legislation, and the statute prohibiting it was sustained by the United States Supreme Court in the *McGuin* case hereinbefore referred to. The insurance scheme was held lawful by the Iowa Supreme Court in a number of cases prior to the adoption of the legislation referred to. And now we have additional legislation allowing the very thing condemned by the prior legislation. And so it is that no constitutional objection can be made to the latest legislation.

“Nearly all of the objections to this Statute are argued from the standpoint of morals and propriety and policy. As of course those were questions for the legislature.

“This Statute may have, and no doubt does have, many objectionable features; but that it is a Statute with the right tendencies I have no doubt, and all such legislation is a matter of growth and development, and in the end when mature, as it ought to be and likely will be, beneficial results will be obtained. At all events, this legislation cannot bring forth worse results than we now have as to these matters by court procedure. And still further, and in no event, can courts condemn the mere policy or proprieties of the law. I find no constitutional objections to this measure. Defendant’s motion will be sustained, and the case dismissed, with prejudice.”

Washington Act recites:

“The common law system governing the remedy of workmen against employers for injuries received in hazardous work, is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-earners. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy and sure and certain relief for workmen, injured in extra-hazardous work, and their families and dependents, is hereby provided regardless of the question of point and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this Act; and to that end all civic actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished except as in this Act provided.”

CONSTRUCTION.

Act is to be construed in a sufficiently broad and liberal interpretation, so as to attain its beneficent object in providing an escape from the rigor of the common law.

Armour & Co. v Industrial Board, Ill. App. Ct.

No. 21310, Jan. 7, 1916.

See "Opinions of Illinois Courts" ante.

Act is to be broadly and liberally interpreted so as to bring about its dominant object of providing support for dependents. Mass.

Coakley v Coakley, 216 Mass. 71, 102 N. E. 930.

Act is to be given a liberal construction in favor of life, health and limb. Wis.

Tallman v Chippewa Sugar Co., Wis., 143 N. W. 1054.

Act is to be so interpreted as effectively to remedy the ills intended to be remedied.

City of Milwaukee v Miller, 154 Wis. 652, 144 N. W. 188.

North Western Iron Co. v Industrial Commission, 154 Wis. 97, 142 N. W. 271.

Appeal of Hotel Bond Co., 89 Conn. 143, 93 Atl. 245.

State v District Court, 128 Minn., 150 N. W. 211.

Sadowski v Thomas Furnace Co., Wis., 146 N. W. 770.

"I feel that in construing this Act of Parliament, as in other cases, there is a risk of frustrating it by excess of subtlety, which I am anxious to avoid."

Ismay v Williamson, 1908, 42 Tr. L. T. 213, 42

Ir. L. T. 213, I. B. W. C. C. 232.

Liability is based, not on tort, but on contract, with implied condition of compensation for injury.

Appeal of Hotel Bond Co., 89 Conn. 143, 93 App. 245.

Compensation is an element of the cost of production, the consumer defraying the expense, and the public bearing the burden.

City of Milwaukee v Miller, 154 Wis. 652, 144 N. W. 188.

Fairness of award by Act not a question for courts.

O'Connell v Simms Magneto Co., N. J. Sup. 89 A. 922.

Compensation and liability acts distinguished.

Gregutis v Clark Wire Works, 86 N. J. L. 610.

Liability is not different from any other, arising out of contract.

Lavin v Wells Bros. Co., 272 Ill. Sup. 609.

“The scheme of the Statute is, in brief, to charge upon the business, through insurance, the losses caused by it, making the business and the ultimate consumer of its product, and not the injured employee, bear the burden of the accidents incident to the business. The Statute contemplates the protection, not only of the employee, but of the employer, at the expense of the ultimate consumer. The Statute must have a broad and liberal interpretation, to protect the employee for all injuries received in the course of employment.”

Spratt v Sweeney Co., 153 N. Y. Sup. 505.

“It ought to be remembered that the Workmen’s Compensation Acts are expressed not in technical but in popular language, and ought to be construed not in a technical but in a popular sense.”

Smith v Coles, 2 K. B. 830, 8 W. C. C. 116.

“The Workmen’s Compensation Act was intended for the benefit of the workmen, not for that of the legal profession. No doubt there has been unfortunately a good deal of litigation under the Act, but I do not think we ought, unless absolutely compelled by the language used, to put such a construction upon it as to convert it into a perennial source of litigation and needless expense.”

Field v Longden & Sons, 1 K. B. 56.

“The Workmen’s Compensation Law must in fairness be deemed to have been enacted in furtherance of a legislative determination, enforced by explicit mandate of the people through amendment of the State Constitution, that a new and different scheme and basis of indemnity for industrial accidents should be adopted in this state, in the light of the social experience of other commonwealths and countries. Injuries sustained by those who perform the manual and mechanical tasks of an industry must be decreed to have been intended by this Statute to be made a social risk, a liability of the industry, a charge upon the productive cost of the article manufactured or the service rendered.

“Hitherto the rule of our Statute and fundamental law had been that any right of recovery for industrial accidents must arise from a breach of the master’s duty as to care and safeguard and accordingly was limited by whatever contractual relation existed between the person injured and the person whose breach of duty was the efficient cause of injury. For this historic concept of liability springing from omission of legal duty created by contractual relation there has been substituted an application of the social principle that regardless of duty and regardless of fault, the expenses and loss of earnings resultant from occupation and injury to a workman engaged in carrying on an inherently hazardous business or avocation of an employer, should be paid in the first instance by the employer and by him made a charge against the operating costs of the business. In place of the traditional juristic rule that the master must respond in damages when his servant is injured through the master’s fault, and that otherwise the servant must be uncompensated and the loss be borne by him alone, the people and legislature have now put in force the changed concept that the *trade product* should be charged with all consequences of inherent trade hazards, and that losses to individual workers, through disability, while engaged

in the service of the proprietor of the business, should be distributed among all its consumers or patrons, rather than left to operate ruinously against the disabled employee or the solitary employer. This mandate of the fundamental will of the people of this state should be remedially applied and beneficially enforced by the State Workmen's Compensation Commission and by the courts, in fair fulfillment of the legislative purpose, and ought not now to be hampered or crippled by continued application of definitions, concepts, and rules of liability which indubitably produced in large part the very conditions of hardship for which the present Statute was designed as comprehensive relief. * * * The law was intended for the protection of workmen and their families; it was intended to afford machinery by which the burdens of injuries sustained by those who do the actual work of a business, and are not themselves employers with a duty of insurance under the Act, may be socially distributed and borne by society in general."

In re Rheinwald, App. Div., 153 N. Y. S. 598.

"The provisions of the acts of the states having adopted such legislation upon the questions here under consideration are very dissimilar and we have been unable to find much help from adjudicated cases in other jurisdictions."

Courter v Simpson Construction Co., 264 Ill. Sup. 495, opinion ante.

"Numerous authorities from other jurisdictions construing Workmen's Compensation Acts have been cited and frequent references have been made to acts in other jurisdictions. Both counsel have cited authorities which it is argued support the conclusions contended for. The wording of our Statute is so different on the question here under consideration that the other acts or decisions could have very little weight as to the proper construction to be here given and further reference to them is unnecessary."

Uphoff v Industrial Board, 271 Ill. Sup. 316.

“It does not help us to be referred to a long string of authorities. The facts in no two cases are on all fours, and to decide one case on a supposed analogy to another is highly dangerous.”

Walters v Staveley Coal & Iron Co., 4 B. W. C. C. 304.

“The Statute gives the employer his choice whether to accept its provisions or to forfeit substantial defenses previously accorded to him by the law, leaving the legal liability as it was but without those defenses. The Statute provides that upon its acceptance its provisions shall be regarded as a part of the contract of hiring, and that the measure of liability of the employer for an injury shall be determined according to the provisions of the Act. The liability is a contract liability not different in its nature from any other liability arising out of contract.”

Lavin v Wells Bros. Co., 272 Ill. Sup. 609.

§ 1 ELECTION.

“Any employer may elect to provide and pay compensation according to provisions of Act.”

“In *Deibeikis v Link-Belt Company*, we held that the relation between employer and employee, when both accept the provisions of the Act, is one of contract, of which contract the said law is a part; but if either elects not to come under the law, and so notifies the proper authorities, then there is no such contract.”

Crooks v Tazewell Coal Company, 263 Ill. Sup. 343.

“Being elective, the Act does not become effective as to any employer or employee unless such employer or employee chooses to come within its provisions. Having once elected to come within the provisions of the Act, so long as such election remains in force the Act is effective as to the party or parties making the election, and in case an employer and an employee both elect to come within the provisions of the Act, the Act itself then becomes a part of the contract of employment and can be enforced as between the parties as such. * * * They thereby agree to settle by arbitration any dispute that may arise between them in reference to compensation for injury.”

Deibeikis v Link-Belt Co., 261 Ill. Sup. 454, opinion ante.

“Every employee shall be deemed to have accepted provisions of Act, when employer so elects.”

Act applies only where both parties have accepted its provisions.

Price v Clover Leaf Coal Mining Co., 188 Ill. App. 27.

Employer cannot be compelled by employee to accept Act.

Dietz v Big Muddy Coal & Iron Co., 263 Ill. Sup. 480, 105 N. E. 289.

Rejection by employer precludes acceptance by employee.

Favro v Superior Coal Co., 188 Ill. App. 203.

Employee may positively reject.

Smith v Western States Portland Cem. Co., 94
Kans. 501, 146 Pac. 1026.

See:

Crooks v Tazewell, 263 Ill. Sup. 243; Note Ann.
Cas. 1915, C. 308.

Bateman v Carterville &c Co., 188 Ill. App. 357.

§ 2 ELECTION.

“Every employer conclusively presumed to have filed notice of election to provide and pay compensation according to provisions of Act, who is engaged in any of enumerated occupations, declared ‘extra-hazardous,’ unless filing notice to the contrary.”

“It thus appears to be a presumption of law that both appellant and appellee were covered by the provisions of said Act unless it should appear that one or both of them had filed an election to the contrary.”

Kinsman v Johnston City & Big Muddy C. & M. Co., 190 Ill. App. 612.

Staley v Illinois Central R. R. Co., 268 Ill. Sup. 356.

All parties in the enumerated occupations are bound by Act until excepted by notice.

Dietz v Big Muddy Coal & Iron Co., 263 Ill. Sup. 480, 105 N. E. 289.

“There are just two ways of coming under the Act, or in other words, of giving the Industrial Board jurisdiction:

“First—By an affirmative election.

“Second—By not specifically rejecting Act, when engaged in any of the businesses, enterprises or occupations enumerated as extra-hazardous.”

Nelson v Fitzgerald, Industrial Board—Bulletin No. 1, Case No. 742, page 95.

Employer's failure to withdraw election to reject Act sixty days previous to January 1st of following year does not automatically constitute election to accept.

Synkus v Big Muddy Coal Co., 190 Ill. App. 602.

Burden of proof of rejection is on claimant.

Id.

Notices—Of acceptance and rejection.

Copy of notice of election, certified by person charged with custody of original, is admissible as best evidence.

Synkus v Big Muddy Coal Co., 190 Ill. App. 602.

Employer who comes under Act by operation of law, is conclusively presumed to have filed notice of his election.

Zorcic v Adams Express Co., I. B. 578 p. 55.

Employer, once under Act, by election or operation of law, remains under its provisions, until excepted according to the specific methods provided by Act.

Flash v Pattridge & Co., I. B. No. 160, p. 46.

Employer, coming under Act, either by election or operation of law, brings with him all his employees in any wise connected with his business and not part only.

Gilfe v Suburban Ice Co., I. B. No. 1305, p. 167.

Zorcic v Adams Express Co., I. B. 578, p. 55.

Minneapolis & Ry. v Industrial Com., 153 Wis. 452, 141 N. W. 1119.

Operation of Act is not ended by mere suspension of business.

Flash v Pattridge Metal Equipment Co., I. B. No. 160, p. 46.

Provisions of Act, whether operative by election or presumption of law, are part of contract of employment.

Radigen v Sanitary District, I. B. No. 158, p. 138.

Averment of being covered by Act necessary.

Krisman v Johnston City & Big Muddy Coal & Mining Co., 190 Ill. App. 612.

Where employer has elected not to come under Act, count must allege negligence.

Price v Clover Leaf Mining Co., 188 Ill. App. 27.

Defense of employer of being under Act, where not mentioned in new affidavit of merits—held waived.

Nosil v Ellis Time Stamp Co., 192 Ill. App. 538.

Pleading non-acceptance by employer, not necessary.

Favro v Superior Coal Co., 188 Ill. App. 203.

Receiver of railroad may reject Act.

Devine v Delano, 272 Ill. Sup. 166

Burden of proof of negative election by employer is on plaintiff.

Synkus v Big Muddy Coal & Iron Co., 190 Ill. App. 602.

Certified copy of notice filed is best evidence.

Bateman v Carterville & Big Muddy Coal Co., 188 Ill. App. 366.

Instruction—part of section—error.

Price v Clover Leaf Coal Co., 188 Ill. App. 27.

Employee waives his common law right by not giving notice of rejection.—Mass.

Young v Duncan, 218 Mass. 246, 106 N. E. 1.

Non-acceptance does not affect previous relation.

Sherchenko v Detroit United Ry., 155 N. W. 423.

All employers affected by Act are presumed within its provisions until the contrary appears, and employer's rejection is affirmative defense.—Kans.

Gorrell v Battelle, 93 Kan. 370, 144 P. 244.

Notice of non-acceptance.

See *Nosil v Ellis Stamp Co.*, 192 Ill. App. 538.

Election—evidence uncertain.

Spottsville v Western States P. C. Co., 94 Kan. 258, 146 Pac. 356.

Suit by employee is not final election, barring jurisdiction of Board.—Cal.

San Francisco Stevedoring Co. v Pillsbury, 149 Pac. 586.

§ 3 OCCUPATION.

"Occupations, enterprises or businesses declared to be extra-hazardous:"

1.—"Building, maintaining, removing, repairing or demolishing any structure."

"Structure."

See *Uphoff v Industrial Board*, 271 Ill. Sup. 312.

City, maintaining water mains, is engaged in 'building, maintaining or demolishing a structure.'

Brown v City of Decatur, 188 Ill. App. 147.

Manhole—excluded.—Wash.

Puget Sound &c Co. v Schleif, 220 F. 48, 135 C. C. A. 611.

2.—"Constructing, excavating or electrical work."

Maintenance of wires of telephone company is extra-hazardous business and within paragraph (b).

Anderson v Ashmore Mutual Tel. Co., I. B. No. 601, p. 132.

3.—"Carriage by land or water and loading or unloading in connection therewith."

Street railway company is engaged in business of carriage by land and loading and unloading in connection therewith, and extra-hazardous enterprise.

Chicago Savings Bank v Chicago Railways Co., I. B. No. 235, p. 104.

Lumber company, keeping teams and wagons for hauling lumber in community is included in term "carriage by land."

"We do not believe that the term, standing alone and without other legal phraseology or explanation, was intended to mean only common carrier for hire."

I. B. Crawford v Darlington Lumber Co., I. B. July 3, 1915.

4.—“Operation of any warehouse or general or terminal store house.”

“Operation of any warehouse” includes not only public warehouses but also such as are used for storing and vending commodities.

Armour & Co. v Industrial Board, Ill. App. Ct. No. 21310, Jan. 7, 1916.

5.—“Mining, surface mining or quarrying.”

Act does not repeal Mining Act.

Rogers v St. Louis Coal Co., 254 Ill. Sup. 104.

Eldorado Coal & Mining Co. v Mariotta, 215 Fed. 51.

Under constitutional provision for safe-guarding miners, statutes regulating mining will not be declared invalid.

Rogers v St. Louis C. Co., 254 Ill. Sup. 104.

6.—“Any enterprise in which explosive materials are manufactured, handled or used in dangerous quantities.”

7.—“Any enterprise wherein molten metal or explosive or injurious gases or vapors or inflammable vapors or fluids, or corrosive acids, are manufactured, used, generated, stored or conveyed in dangerous quantities.”

Board of Trustees of University of Illinois, because operating a freight elevator and in the conduct of its business using molten metal and explosives, is engaged in extra-hazardous enterprise and presumed within Act unless notifying Board to the contrary.

North v University, I. B. Case No. 462, p. 63.

8.—“Any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, use, or the placing of machinery or appliances, or the protection and safe-guarding of the employees or the public therein.”

Note:—Statutory regulations which bring establishments within Act by presumption of law, within the legislative intent in enumerating extra-hazardous enterprises, naturally include:

The Factory Safety Act.

The Structural Act.

The Blower Act.

The Mines Safety Act.

The Railway Safety Act.

On the contrary, the Child Labor Act, the Female Hours of Service Act, etc., would seem not included.

See *Bishop, Admr. v Bowman Dairy Co.*, Ill. App. No. 21016; *Bateman v Carterville Coal Co.*, 188 Ill. App. 357; *Nelson v Fitzgerald*, I. B. 570, p. 71.

Favro v Superior Coal Co., 188 Ill. App. 203.

Price v Clover Leaf Mining Co., 188 Ill. App. 27.

Forrest v Roper Furn. Co., 187 Ill. App. 504.

Burnes v Swift & Co., 186 Ill. App. 460.

Also *Streeter v Western Wheeled Scraper Co.*, 254 Ill. Sup. 244.

Wilson v Railway Spring Co., 165 Ill. App. 344.

De La Gardelle v Hampton Co., 153 N. Y. Sup. 162.

Packer's branch house operating elevator which is regulated by city ordinance, included.

Estate of Richardson v Armour & Co., I. B. Case No. 437, p. 57.

Defenses of prudence and foresight are foreclosed by legislative decision in Factory Safety Acts.—Kans.

Caspar v Lewin, 82 Kan. 604.

Failure to guard, when proximate cause of injury.

Hartman v Berlin & Co., 127 N. Y. Supp. 187.

United States Cement Co. v Cooper, 82 N. E. 981.

Labatt: Master & Servant § 1856.

“Intentional omission” of employer, to comply with statutory safety regulations—civil liability not affected. Where employer failed to guard saw machinery and a splinter injured an employee’s eye, testimony was competent to show that there were on the market practical guards which would have prevented danger.

Forrest v Roper Furn. Co., 187 Ill. App. 504.

Right of action under safety acts barred unless employee files notice of election not to be subject to Act.

Burnes v Swift & Co., 186 Ill. App. 466.

Department store—included in par. (b) § 3.

Bostedo v Fair, I. B. No. 506, p. 15.

Stevens v Hillman’s Department Store, I. B. No. 502, p. 17.

Department Store, operating electric power lathe included.

Wendt v Industrial Commission, 80 Wash. 111; 141 Pac. 311.

Dry goods and clothing business is not extra-hazardous.

Christian v Barber, I. B. No. 570 p. 71.

Tailoring business, using sewing machine operated by motor, is not within Act.

“This business is purely non-hazardous and one in which it would be necessary to make an election in the regular way provided by the Statute in order that it might be termed as operating under the terms and provisions of this Act. The fact that no notice was given of its refusal to come under the Act cuts no figure because its business was not such as would require it to give such notice and not having elected to come under the Act, the latter can not be invoked by the employee.”

Kennedy v Vehon, I. B. July 2, 1915.

Mercantile establishments, operating ordinary elevator not extra-hazardous. (Wash.)

Guerrieri v Industrial Ins. Com., 146 p. 608.

Apartment house—excluded. N. Y.

Sheridan v Groll Const. Co., 112 N. E. 568.

MOTOR VEHICLE ACT AND ORDINANCES.

“There are just two ways of coming under the Act, or in other words of giving this Board jurisdiction:

First—By an affirmative election.

Second—By not specifically rejecting the Act when engaged in any part of the businesses, enterprises or occupations enumerated under this Act as extra-hazardous.

Counsel for applicant raises the point that paragraph (8) of section 3 brings respondent under the Act and gives the Board jurisdiction. This paragraph deals with the questions of municipal ordinances, regulations, etc.

Counsel for applicant claims there are many ordinances regulating the speed, lights, etc., of automobiles, thereby placing the respondent under the Act.

The Board, however, cannot agree with this theory of applicant, but is of the opinion that the provisions of this paragraph apply rather to the business, enterprise, or occupation of the employer. It is the nature of the employers' business that decides whether or not an employer comes automatically under the provisions of this Act, and not the particular kind of labor the employee may happen to perform at the time of the injury. To hold otherwise would be to hold every owner of an automobile under the Act, regardless of the fact whether he was engaged in business or not. There is but one way for a private automobile owner to come under the Act. That is by notifying the Industrial Board of his election to accept the provisions of the Act.

Nelson v Fitzgerald, I. B. 570, p. 71.

Chauffeur: Newcomb v Albertson, N. J., 89 Atl. 928.

Ordinance regulating sidewalks and awnings held bringing business within Act.

Christianson v Barber, I. B. '570 p. 71.

Elevator: See Walsh v Cullen, 235 Ill. Sup. 91.

“Not to be construed to apply to any work, employment or operation done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, etc.”

Only enterprises of some importance included.

Uphoff v Industrial Board, 271 Ill. Sup. 312.

One working for a farmer in the occupation of running a threshing machine that is operated by belt and pulleys, or corn shellers operated in the same way, and injured while in such employment, is entitled to damages as not coming within Act.

The business of running threshing machines that are operated by belts and pulleys is not by the terms of the provisions of the Act hazardous employment.

Benton v Wilson, I. B. No. 181, p. 54.

Farmer moving threshing machine not included.

Poling v Brown, I .B. 492 p. 21.

English Act applies to “employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment;” “agriculture” to include horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry or bees, and the growth of fruits and vegetables.

§ 3 DEFENSE.

“In action for damages against employer engaged in enumerated extra-hazardous occupations, electing not to provide and pay compensation under Act, it shall not be a defense that:

1st—“The employee assumed the risks of the employment.

2nd—“The injury or death was caused in whole or in part by the negligence of fellow servants, or

3rd—“The injury or death was proximately caused by the contributory negligence of the employee.”

“It will be observed that the Act is elective, and that no employer or employee is compelled to accept or come within its provisions unless he chooses to do so. Therefore, unless the employer or the employee elects to come within the provisions of the Act he is not affected by any of the provisions thereof. This is subject, however, to one exception. Under the conditions specified in said section 1 an employer is deprived of the common law defense of assumed risk, contributory negligence, and that the injury or death was caused, in whole or in part, by the negligence of a fellow servant. To deprive an employer, under such circumstances, of the right to assert those defenses is not an exercise of the police power, but is merely a declaration by the legislature of the public policy of the state in that regard. The right of the legislature to abolish these defenses cannot be seriously questioned. The rules of law relating to the defenses of contributory negligence, assumed risk and the effect of negligence of a fellow servant were established by the courts, and the legislature may modify them or abolish them entirely, if it sees fit to do so.”

Deibeikis v Link-Belt Co., 261 Ill. Sup. 454, opinions ante.

“Plaintiff alleged that defendant had elected not to provide and pay compensation under Act and that while he was engaged as a miner in defendant’s coal mine, a large piece of slate, which had been hanging in the roof for a week, the condition of which was or by the exercise of ordinary care would have been known to defendant, without warning, fell upon and injured plaintiff; the second count alleging defendant’s failure to furnish a reasonably safe place to work; and the third, violation of the provisions of § 21 of the Miners’ Act of 1911. Defendant demurred on the ground that the Workmen’s Compensation Act is unconstitutional and invalid and that plaintiff had not averred that he had given notice of his election to accept its provisions. Demurrer was waived by pleading over. Constitutional question was waived by appeal to Appellate Court. All counts being based on same state of facts, no election was necessary, and there was no misjoinder. Count pleading Workmen’s Compensation Act, but not averring negligence, not good. Defendant, by non-acceptance of Act, waived defenses of assumed risk and fellow servant’s and contributory negligence, the latter, however, to be considered in reducing damages.”

Price v Clover Leaf Coal Mining Co., 188 Ill. App. 27.

“The appellant elected not to pay compensation under the Act. The effect of that election by appellant is to relegate appellee to a suit at law for his damages, measured by the law as it existed prior to the Act, except that contributory negligence, if any, of appellee should be considered in reduction of his damages.”

French v Clover Leaf C. M. Co., 190 Ill. App. 400.

Employer, in enumerated occupations, rejecting Act, is liable under general law, and precluded from enumerated defenses; except that contributory negligence reduces damages.

Crooks v Tazewell Coal Co., 263 Ill. Sup. 343,
105 N. E. 132.

Price v Clover Leaf Mining Co., 188 Ill. App. 27.

Strom v Postal Telegraph Cable Co., 271 Ill.
Sup. 544.

Dietz v Big Muddy Coal & Iron Co., 263 Ill. Sup.
480.

“Appellant concedes that this court has sustained the power of the legislature to abolish the defenses.”

Strom v Postal Telegraph Cable Co., 271 Ill.
Sup. 544.

Although employee has made no active election.

Synkus v Big Muddy Coal & Iron Co., 190 Ill.
App. 602.

Deprivation of common law defenses is not infringement of constitutional rights.

Armour & Co. v Industrial Board, Ill. App. Ct.,
No. 21310, Jan. 7, 1916.

“Those remaining out of the Act and who might come in are deprived of certain defenses which the law might abolish as to all if it was seen fit to do so.”

Jeffery Mfg. Co. v Blagg, 235 U. S. 571.

“Negligence on decedent’s part would not bar recovery in cases where, as here, the employer had not elected to take the benefit of the Ohio Workmen’s Compensation Act. * * * Both the defenses of contributory negligence and assumed risk were denied defendant through its failure to come under the Act.”

Crucible Steel Forge Co. v Moir, C. C. A. 219
Fed. 151.

Permission to introduce defenses under one count and not another, proper.

Devine v Delano, 272 Ill. Sup. Ct. 166; 111 N. E.
742.

Non-acceptance of Act bars defenses of assumption of risk, contributory negligence and negligence of fellow servant.

Crucible Steel Forge Co. v Moir, 219 Fed. 151, 135 C. C. A. 49.

Dooley v Sullivan, 218 Mass. 597, 106 N. E. 604.

Lydman v De Haas, 158 N. W. 718.

Memphis Cotton Oil Co. v Tolbert, Tex., 171 S W. 309.

Salus v Great Northern Ry. Co., 157 Wis. 546, 147 N. W. 1070.

Matheson v Minneapolis &c Ry., 126 Minn. 286, 148 N. W. 71.

Consolidated Arizona Smelting Co. v Ujack, Ariz., 139 P. 465.

Defense of contributory negligence held not abolished in Wisconsin.

In re Zohrlaut Leather Co., 147 N. W. 37.

Defenses lie where employee rejects Act.

Karney v North West. Malleable Iron Co., 160 Wis. 316, 151 N. W. 786.

Where employer has rejected Act, count must allege negligence.

Price v Clover Leaf Mining Co., 188 Ill. App. 27.

Sections 3 and 10 apply only where both employer and employee have accepted Act.

Price v Clover Leaf Mining Co., 188 Ill. App. 27.

Defenses at common law are lost by rejection.

Price v Clover Leaf Mining Co., 188 Ill. App. 27.

Synkus v Big Muddy Coal Co., 190 Ill. App. 602.

Contributory negligence reduces damages.

Price v Clover Leaf Mining Co., 188 Ill. App. 27.

Instruction, in words of part of section 1, misleading.

Price v Clover Leaf Mining Co.

Safety Acts.

Employer, guilty of intentional omission to comply with statutory safety regulations, is not relieved by Compensation Act from his general civil liability for injuries resulting therefrom to employee.

Forrest v Roper Furniture Co., 187 Ill. App. 504.

Winter v Doelger Brewing Co., N. Y., 159 N. Y. S. 113.

Unguarded circular saw—Splinter in eye—instruction.

Ib.

Open hatchway—suit for injuries.

Wajer v U. S. Brewing Co., 184 Ill. App. 545.

Failure to guard a circular saw is intentional omission.

Forrest v Roper Furn. Co., 267 Ill. 331, 108 N. E. 328, Aff. 187 App. 504.

Act bars suit for damages under "Health, Safety and Comfort Act," where no elective corporation officer's intentional omission caused injury.

Burnes v Swift & Co., 186 Ill. App. 460.

Factory Act—suit under.

Shade v Ash Grove &c Co., 92 Kan. 146, 139 P. 1193.

Willful omission.

McWeeney v Standard Boiler & Plate Co., 210 F. 507.

Suit may be brought under Factory Act, although both employer and employee have accepted Compensation Act.

Smith v Western States P. Cement Co., 94 Kans. 501, 146 P. 1026.

"Intentional" in section 3 not to be as broadly construed as "willful." (Act 1911.)

Burnes v Swift & Co., 186 Ill. App. 460.

Instruction, omitting defendant's knowledge of defect in failure to guard saw, sustained.

Forrest v Roper Furn. Co., 267 Ill. 331, 108 N. E. 328, Aff. 187 App. 504.

Due care—contributory negligence—assumption of risk—duty to warn—safe place.

See *Schaffner v Massey Co.*, 270 Ill. Sup. 207.

West Stone Co. v Muscial, 196 Ill. Sup. 382.

Hartrich v Hawes, 202 *id.* 334.

Chicago Edison Co. v Moren, 185 *id.* 571.

Illinois Steel Co. v Schymanousky, 162 *id.* 447.

Anderson Pressed Brick Co. v Sobkowiak, 148 *id.* 573.

National Syrup Co. v Carlson, 155 *id.* 210.

Tallman v Chippewa Sugar Co., Wis., 143 N. W. 1054.

Employer must use reasonable care in warning employee of dangers not known to him and instruct him how best to perform the particular service.

Casey Hedges Co. v Oliphant, (1916) 228 Fed. 636.

Contract to assume risk against public policy and void.

Devine v Delano, 272 Ill. Sup. 166.

Bell v Toluca Coal Co., 272 Ill. Sup. 576.

§ 7 ACCIDENT.

§ 1.—*Accident*. “Accidental injuries, sustained by employee, arising out of and in the course of the employment.”

“Section 1 of the Act requires that compensation may be had for accidental injuries sustained by any employee ‘arising out of and in the course of employment.’ This provision of the statute has never been construed by this court but somewhat similar Acts have been construed by the courts in other jurisdictions. Under these authorities it is clear that it is the duty of an employer to save the lives of his employees, if possible, when they are in danger while in his employment, and therefore it is the duty of a workman in his employ, when occasion presents itself, to do what he can to save the lives of his fellow-employees when all are at the time working in the line of their employment.”

Dragovich v Iroquois Iron Co., 269 Sup. 478,
opinion ante.

Employee injured while removing tin can, placed on trip hammer for fun by a bystander, sustained accidental injury arising out of and in course of his employment.

Knopp v American Car & Foundry Co., 186 Ill.
App. 605.

See also, “Opinions” ante.

Brown v City of Decatur, 188 Ill. Sup. 147.

Lord Lindley, in leading case of *Fenton v Thorley*, 1903, A. C. 443, K. B. 789:

“The word ‘accident’ is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected loss or hurt apart from its cause and if the cause is not known the loss or hurt itself would certainly be called an accident. The word accident is often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of accidents are occasioned by carelessness, but for legal purposes it is often important to distinguish carelessness from other unintended and unexpected events.”

“An accident is a coming or falling; an event that takes place without one’s foresight or expectation; an event which proceeds from an unknown cause and therefore not expected; chance; casualty; contingency.”—Webster’s Dictionary.

Ripley v Railway Pass. Assur. Co., 20 Fed. Cas. 283.

Aetna Life Ins. Co. v Vandecar, 86 Fed. 282.

“Accidents are unforeseen, unexpected and unthought of occurrences.”

Breed v Glasgow Ins. Co., 82 Fed. 760.

See Words & Phrases, Vol. I, p. 62.

The Supreme Court of New York, appellate division, unanimously say:

“The House of Lords defined the meaning of ‘personal injury by accident’ as an ‘unlooked for mishap, or an untoward event which is not expected or designed.’ *Fenton v Thorley & Co.*, A. C. 443, 5 W. C. C. 1. The meaning of the word ‘accident,’ as contained in the New Jersey Compensation Act, is an unlooked for and untoward event which is not expected or designed. *Bryant v Fissell*, 84 N. J. L. 72, 86 Atl. 458. The United States Supreme Court has defined the term ‘accidental,’ as used in an accidental insurance policy, as used ‘in its ordinary, popular sense’ as meaning ‘happening by chance; unexpectedly taking place; not according to the usual course of things; or not as expected;’ that, if a result is such as follows from ordinary means, voluntarily employed, in a not unusual or unexpected way, it cannot be a result expected by accidental means; but that if, in the act which precedes the injury, something unforeseen, unexpected, unusual occurs, which produces the injury, then the injury has resulted through accidental means.” *Mutual Acc. Assn, v Barry*, 131 U. S. 100, 121; 9 Sup. Ct. 755; 33 L. Ed. 60. The use of the conjunction in section 10 of New York Workmen’s Compensation Law (chapter 67, Consol. Laws; chapter 816, Laws of 1913, as re-enacted and amended by chapter 41, Laws of 1914, and amended by chapter 316, laws of 1914, and chapters 167, 168, Laws of 1915)—“accidental personal injury sustained by the employee arising out of and in the course of his employment” indicates that the accidental injury must both arise out of and in the course of the employment. An accidental injury sustained during the course of the employment, but not arising out of the employment, as well as such an injury arising out of the employment, but not sustained during the course of the employment, does not fall within the provisions of the Compensation Law. * * * The language ‘arising out of and in the course of the employment’ is also used in the English Act, and we may therefore properly examine the de-

cisions of the courts of that country for their views as to the construction of this language as applied to cases more or less similar to the case before us. Where, by an arrangement between a railway company and certain employees, they were allowed to go to a cabin on the railway company's premises for certain meals, and one of such employees was returning from the cabin after having a meal there, and was knocked down by a car which was being shunted on one of the company's tracks, it was held that the injury arose out of and in the course of the employment.

Earnshaw v Lancashire & Y. Ry. Co., 115 L. T. Jour. 89, 5 B. W. C. C. 28.

"A night watchman, who left his box and went into a shanty, where tools were kept, to cook and eat his food, and was injured by the falling of the shanty, was held to have been injured by accident arising out of and in the course of his employment.

Morris v Lambreth Borough Council, 22 T. L. R. 22, 8 B. W. C. C. 1.

"A bricklayer, who was paid according to the number of hours he worked, remained in the building during the noon hour, although the workmen employed on the building usually went away, and sat down under a wall to eat his dinner. The wall fell while he was sitting there and injured him. * * * The Court of Appeals held that the time of employment covered all his movements within the ambit of the premises where he was employed which were ancillary to the work which he had to do, and that the courts should take a broader view and treat him as still in the employment. Collins, M. R., said:

'It was to the interest of the respondent that he should eat the necessary food to enable him to do his work, and he was allowed as part of the terms of employment to stay on the premises during dinner hour and eat his dinner there. We cannot say that it is an inference of

law that, because he was eating his dinner and was not paid wages in respect of the dinner hour, he ceased to be in the respondent's employ. I think that the accident here arose out of and in the course of the employment.'

All the other judges concurred in that conclusion.

Blovelt v Sawyer, 1 K. B. 271, 89 L. T. 658, 6 W. C. C. 16.

'A lighterman, while waiting for the tide to ebb sufficiently to allow him to go to work to pump out a barge, went to a small boat 50 yards from the barge to rest, and in trying to get into the boat was injured. It was held by the Court of Appeal that his injury arose out of and in the course of his employment.

May v Ison, 7 B. W. C. C. 148, 110 L. T. 525.

'A risk is incidental to the employment when it belongs to or is connected with what a workman has to do in fulfilling his contract of service.

Pope v Hill's Plymouth Co., 102 L. T. 632, and on appeal, 105 L. T. 678.

'In the case of *North Carolina R. Co. v Zachary*, 232 U. S. 248, 34 Sup. Ct. 305, 58 L. Ed. 591, Ann. Cas. 1914, C. 159, it was held that where an engineer who had prepared his engine for a trip, had left it to go to his boarding house a short distance away, and was run over and killed while crossing a track en route to his house, he was then in the employ of the company. The court said:

'There is nothing to indicate that this brief visit to the boarding house was at all out of the ordinary, or was inconsistent with his duty to his employer. It seems to us clear that the man was still 'on duty,' and employed in commerce, notwithstanding his temporary absence from the locomotive engine.'

'Where a railroad employee, in crossing the tracks at a public crossing to reach a toilet, was struck by an automobile and thrown upon the tracks, where he was subsequently struck by one of the defendant's trains, the acci-

dent was one 'arising out of and in the course of the employment,' within the meaning of the Employers' Liability Act, for the resulting fatal injury.'

Zabriskie v Erie R. Co., (N. J. Sup.) 88 Atl. 824.

"An injury sustained by a workman who is employed by the week to work in a room leased to his employer, in a building owned by the lessor, when the workman on his way to lunch, at the noon hour, has left the workroom, and is descending the stairway, which is in control of the owner of the building, but which the employer and employees have the right to use as the only means available for going to and from the workman's place of employment, can be said to have arisen out of and in the course of his employment within the meaning of the Workmen's Compensation Act. *Sundine's case*, 218 Mass. 1, 105 N. E. 433. * * *

"In the case of *Parker v Hambrook*, 5 B. W. C. C. 608, before the Court of Appeal, the headnote, which correctly states the substance of the decision, reads:

'A workman was employed to get flints on the surface, or just below the surface, of a quarry. He was expressly forbidden to go into the trench, 11 feet deep. The workman was paid according to the number of flints dug out. To take shelter from the rain and to get more flints he went into the trench and was smothered by a fall of the earth. Held, the accident did not arise out of and in the course of the employment.'

"In *Weighill v South Henton Coal Co.*, 4 B. W. C. C. 141, before the Court of Appeals, a collier in a coal mine was ordered to cut the coal in the colliery. He left his work and went to cut coal in a part of the mine where it was forbidden by special rule to cut any. He thereby undermined some props and caused a fall, which killed him. Held, that the accident did not arise out of and in the course of employment.

"However in the case of *Harding v Bryndda Colliery Co.*, 2 K. B. 747, 4 B. W. C. C. 269, the Court of Appeals,

distinguishing the Weighill case, held, when a collier who had been set to drill a hole from above into the seam, in order to draw off gases and render safe the seam, which was marked off as forbidden, and was told that he must not go into the seam to see if the drill was running straight, but nevertheless went and was suffocated, that there was evidence to support the finding of the county judge that the accident arose out of and in the course of employment, and that the appeal by the employers from the award should be dismissed.

“In the case at bar the claimant violated no rule of his employer, did no forbidden act, and accepted with the knowledge of defendant’s foreman the only shelter available, unless it might have been a place in the stone crusher which was being operated, to the noise of which he seems to attribute his failure to hear the moving locomotive. * * * Obtaining shelter from a violent storm, in order that he might be able to resume work when the storm was over, was not only necessary to the preservation of claimant’s health, but was incident to the claimant’s work, and was an act promoting the business of the master. * * *

“That the purpose of the Workmen’s Compensation Law was to make the risk of an accidental injury one of the industry itself, even when happening through the fault of the workman, treating it as an element in the cost of production, to be added thereto, and hence borne by the community in general, and that the Act should be construed liberally, and not strictly, as a statute in derogation of the common law, and should receive as broad an interpretation as can fairly be given it, cannot be questioned. I think that the injury to the claimant arose out of and in the course of his employment within the intent of the statute and hence that the award should be affirmed.”

Moore v Lehigh Val. Ry. Co., 154 N. Y. S. 620.

“The term accident, given its popular and wide meaning for the purpose of this Act, is defined by Lord McNaughton, ‘An accident is an untoward event which is not expected or designed.’ The Board believes this interpretation of the word ‘accident’ to be a fair and reasonable one for the purpose of our Act which is largely patterned after the English act.

“In the opinion of this Board an accident arises out of the employment ‘when there is apparent to the rational mind upon consideration of all the circumstances a casual connection between the conditions under which the work is required to be performed and the resulting injury. Under this test if the injury can be seen to have followed as a natural incident of the work, and to have been contemplated by a reasonable person, familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises out of the employment, but it excludes an injury which cannot be fairly traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen nor expected but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source, as a natural consequence.’ And the injury occurs in the course of employment when the workman is doing the duty which he is employed to perform.”

Bishop v City of Chicago, I. B. No. 262, p. 96.

“A prima facie case is made when it is shown that an employee was at his usual place of employment, at the usual time of day when he is expected and required to be there, and an injury of any character is shown.”

Cerny v Wood St. Mill Co., I. B. No. 454, p. 53.

“Where a miner working in the mines inhales poisonous gases which caused his death, the injury causing death arose out of and in the course of the employment.”

Giacobbia v Kerno & Coal Co., I. B. No. 409,
May 12, 1915.

“A roadmaster of a railroad requested an interpreter to get ten men, such as he had secured before, and bring them to a certain siding for the purpose of going to work, at the same time giving him a pass for himself and ten men, from Decatur to the place of work; after arriving at the place, one of the men, while removing his baggage, was struck by a train and killed. The evidence is sufficient to justify the conclusion that the deceased was in the employ of the railroad company, and that the injury arose out of and in the course of the employment.

Patterson v Bloomington & Co., I. B. No. 727,
p. 101.

“Deceased was working about a barn of respondent and occasionally drove a wagon. On the occasion on which he met his death, he took a different route, and drove through a subway under a right-of-way of a railroad, which was not a regularly traveled wagon way but had all the appearances of a wagon. In attempting to drive under the subway, deceased's head was caught between the top of the tank and the lower beams of the bridge, from which he received injuries causing his death.

“Deceased was working in the line of his employment; he drove through the subway in an apparent honest effort to subserve the interest of the employer; the accident arose out of and in the course of the employment.”

Hamang v Paragon Ref. Co., I. B. No. 756, p. 23.

“Where a driver was employed to solicit sales of beer and make delivery of same, and in performance of his duties was permitted to employ helpers, and the helper in performance of his duty was injured, the brewery company is liable for the injury sustained to the helper just the same as though it employed the helper, paid him, directed him, and controlled his every action as an individual employee of the company.”

Schmidt v William & Co., I. B. No. 673, p. 118.

“When an employee was working on a punch press as a machinist, and while working at the punch press felt a numbness in hand and arm and subsequently lost the power of his arm, which became totally disabled as a result of the jolting and jarring of the machine, such injury comes within Act.”

Reid v Thomas El. Co., I. B. No. 975, p. 144.

“It is the judgment of the Board that during the time the work was suspended the applicant was in the employ of the respondent, and that the mere fact that he stepped from his place of employment on the car on which he was working to the Illinois Central Railroad Company’s track, accompanied by other employees, and sat down there, did not suspend the relation of master and servant.”

Robinson v Kahl Const. Co., I. B. No. 664, p. 7.

“If it is the duty and the custom of an employee to do whatever he found necessary to be done in a shop and he is injured in the performance of his work, he is entitled to compensation as the accident arose out of and in the course of the employment.”

Whaley v Hudson, I. B. No. 1052, p. 186.

“Where an employee received an injury to his hand by striking a rusty pipe and blood poison set in, and he thereafter was taken to a hospital for treatment; and where the testimony of a physician showed that as a result of blood poison his mind became unbalanced; that during the night he ran out of the hospital and disappeared; that on the following morning his dead body was

found on the railroad track, there is sufficient connection between the injury, infection of the hand, and subsequent death on the railroad track, so that death was the direct result of the accident sustained by him during the employment."

Chiesa v United States Crushed Stone Co., I. B.
No. 629, p. 82.

Employee of a drug manufacturer, injured while building a shelf, which was not immediately connected with such hazardous employment, included. N. Y.

In re Larsen, 112 N. E. 725.

See:

In re Heitz, N. Y., 112 N. E. 750.

Waters v Taylor Co., N. Y., 112 N. E. 727.

“Where one engaged as teamster, whose special duty was to take care of his team, feed the same, and make deliveries to customers of the employer, after his day’s work, took his team to the stable and while unharnessing and feeding the team, passed behind the team of a fellow employee and was kicked by one of the horses, the injury arose out of and in the course of his employment.”

Gylfe v Suburban Ice Co., I. B. 1305, p. 167.

“Where a number of employees were standing in line before a pay window for the purpose of receiving their pay checks, and some of them began pushing and shoving in a friendly way, and applicant was pushed out of line and received a fall from which he was injured, the mere scuffling does not take the employee temporarily out of the employment and employee is entitled to compensation for injuries sustained while on the grounds of the employer and to all intents and purposes in the employ of employer; the injury arose out of and in the course of the employment.”

Garls v Pekin Cooperage Co., I. B. No. 561, p. 75.

“An employer engaged in the manufacture of leather goods would occasionally have one of his employees go to his home to do work about the house, and the employee did whatever work was required by the women in charge of the household, which had been the practice for a number of years. The city of Chicago required some improvement to be made upon the alley and the employee was instructed to do this work, and while so engaged stepped on nail from which he got lockjaw and died. The fact that the employee was working at the private residence of the employer under foregoing statements of facts does not affect the relation between the employer and employee and employee is entitled to compensation under Act.”

Foreman Bros. Bank. Co. v Lanz & Co., I. B. No. 153, p. 81.

“In the case of *Hulda Hanson, administratrix of the estate of Joseph B. Hanson, deceased, v Commercial Sash & Door Company*, this Board held that, where it is difficult to determine where the weight of testimony lies concerning a state of facts or a condition that may be material concerning the ‘manner’ in which an accident occurred under the Act, the legal presumption applicable to that phase of the record is that it was accidental. The Board is of opinion in this case in the light of that rule that, where it is difficult from the testimony to determine the extent and character of the injury received in cases where the parties are operating under the Act, the presumption of law should favor the payment of compensation.”

Isidora v Rockford Gas Light & Coke Co., I. B. No. 555, p. 42.

See:

Talacznski v Armour & Co., I. B. No. 165, p. 48.

Kringle v Meyers, I. B. No. 991, p. 72.

Elfstrom v Erickson, I. B. No. 558, p. 73.

Burgnon v Edgewater Coal Co., I. B. No. 582, p. 86.

Struple v Bishop, I. B. No. 487, p. 19.

“Plaintiff was operating a crane on the Mohawk river, when the crane broke and he jumped in the river to avoid injury. As the result of exposure in wading to shore, he contracted a heavy cold leading on to tuberculosis and disability.

We consider the claimant in the same position as if the accident had thrown him into the river, and, clearly, his being accidentally thrown 10 feet into the water was an injury within the meaning of the Act, and the disease following has been found to naturally and unavoidably result from that injury, * * * which, it has developed was very serious.”

Rist v Larkin & Sangster, 156 N. Y. Supp. 875.

“It is not easy nor necessary to the determination of the case at bar to give a comprehensive definition of these words which shall accurately include all cases embraced within the Act and with precision exclude those outside its terms. It is sufficient to say that an injury is received ‘in the course of’ the employment when it comes while the workman is doing the duty which he is employed to perform. It arises ‘out of’ the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises ‘out of’ the employment. But it excludes an injury which can not fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.”

In re Employers' Liability Association, Mass.,
102 N. E. 697.

The same court held a workman to have been in the course of employment in a case in which a horse which he was driving ran away and killed him while on the way to a watering trough where he was to water the horse in accordance with instructions, even though he intended afterwards to ride on to his home to get dinner, which would not have been an act in the course of employment.

Pigeon v Employers' Liab. Assurance Corp., 102
N. E. 932.

Different tests are to be applied to "in course of" and "out of." (Mich.)

Hopkins v Michigan Sugar Co., 150 N. W. 325.

Slipping on ice in city street, causing death, excluded.

Id.

Injury from falling horse, included.

Costello v Taylor, 217 N. Y. 175; 111 N. E. 755.

Casual connection between conditions of the work and the injury is sufficient.

In re Employers' Liab. Ass. Corp., 215 Mass.

497, 102 N. E. 930, 216 Mass. 71.

Going to work included.

City of Milwaukee v Althoff, 156 Wis. 68.

Riding to place of work in master's wagon, in course of employment.

In re Donovan, 217 Mass. 76, 104 N. E. 431.

Going to lunch included.

Clem v Chalmers Motor Co., 178 Mich. 340.

Rayner v Sligh Furn. Co., 180 Mich. 168.

Factory employee, whose hair, while being combed, was caught in machine, included.—N. J.

Terlecky v Straus, 86 N. J. L. 708, 92 A. 1087.

Employee, injured while going to lunch, on stairs not within employer's control—in course of employment.

In re Sundine, 218 Mass. 1, 105 N. E. 433.

Employee going home for lunch—excluded.

Hills v Blair, (Mich.) 148 N. W. 243.

Employee going home from plant and killed by train—excluded.

Leveroni v Travelers' Ins. Co., 219 Mass. 488, 107 N. E. 349.

Direct proof of how accident occurred, not necessary. Mass.

In re Von Ette, 111 N. E. 696.

Employee injured while removing from a die a can placed there by a bystander for fun, held in course of employment.

Knopp v American Car & Foundry Co., 186 Ill. App. 605.

Employee fatally injured in slipping, while dodging playful attack of fellow employee, in course of employment.

Halley v Moosbrugger, N. J., 93 Atl. 79.

Railway employee, crossing tracks on way to toilet, struck by automobile and later by train, injured in course of employment.

Zabriskie v Erie Ry., N. J., 88 Atl. 824.

Employee, when presumed to have been in performance of his duty.

Crucible Steel Forge Co. v Moir, C. C. A. 219 Fed. 151.

Worthington v Elmer, 207 Fed. 309.

"If a workman in the reasonable performance of his duties sustains a physiological injury as the result of the work he is engaged in, I consider that this is accidental injury in the sense of the Statute."

Stewart v Wilsons & Coal Co., 5 Sc. Sess. Cas. 5th Series 120.

Where an employee, in an emergency, does what he deems necessary for his master's interest, he remains in course of employment.

Durham v Brown Bros., 1 Sc. Sess. Cas. 5th Ser. 279.

For other citations see

Labatt: Master & Servant, Vol. 5, § 1806.

Burden of proof that accident arose out of and in course of employment is on plaintiff.

McNicholas v Dawson, 68 L. J. Q. B. N. S. 317.

Sailor returning from shore leave included.

Leach v Oakley, 1 K. B. 523, 4 B. W. C. C. 91.

English Act—Phraseology.

“If in any employment (to which this Act applies) personal injury by accident arising out of and in the course of the employment is caused to a workman his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule of this Act.”

“Course of Employment”—see

Spooner v Detroit Saturday Night Co., (Mich.)
153 N. W. 657.

Larsen v Paine Drug Co., 155 N. Y. S. 759.

De Voe v New York State Rys., 155 N. Y. S. 12.

Mihm v Houssey, 155 N. Y. S. 860.

Hendricks v Seeman Bros., 155 N. Y. S. 638.

Newman v Newman, 155 N. Y. S. 663.

Bryant v Fissell, N. J., 86 Atl. 458.

Zabriskie v Erie R. R. Co., 88 Atl. 824.

Clem v Chalmers Co., 144 N. W. 848, Mich.

In re Employers' Liability Assur. Co., Mass.,
102 N. E. 697.

Pigeon v Employers' Liab. Ins. Co., Mass., 102
N. E. 932.

Muzik v Erie R. R., 86 N. J. L. 695, 92 A. 1087.

State v District Court, (Minn.) 151 N. W. 912.

Sabella v Brasileiro, (N. J.) 81 A. 1032.

In re Howard, 218 Mass. 404, 105 N. E. 636.

Milwaukee Coal Co. v Industrial Com., 160 Wis.
247, 151 N. W. 245.

Hulley v Moosbrugger, (N. J.) 95 A. 1007.

Carroll v What Cheer Stables Co., (R. I.) 96 A.
208.

Assault:

“On principle, the better rule seems to be, that the assault which has no connection with the work in which the employee is engaged does not entitle the workman to compensation. On the other hand, justice appears clearly to have been accomplished in awarding compensation in those cases where robbery was the motive of the assault, or where it was committed to prevent an employee from performing his duty. * * * Thus, a cashier, employed regularly to carry wages by train to a colliery, was shot by a stranger in the course of the journey, and the wages were stolen. It was held that his death was caused by an accident and that the accident arose out of and in the course of the employment. * * * A night watchman on the premises of his employer who, while in the discharge of his duty, was shot by a burglar, from the effects of which he died, was held to have been killed while in the course of his employment and his dependents were entitled to compensation.

“It is argued, however, that the term ‘accidental injury’ in the Illinois Act precludes the idea that one killed in the performance of his duty, as the deceased was here, by a robber, or some other wilful act is barred from recovering compensation.

“Section 1, subsection 1m of the English Act, 1906, uses the terms ‘personal injury by accident arising, etc.’ Without arguing or going into the question of whether ‘accidental injury’ or ‘personal injury by accident’ are different in legal meaning, or not, we find that in the case of *Challis v London & South Western Railway Company*, 2 K. B. 154, the courts held that an engine driver on a railway injured by a stone thrown by a mischievous boy was entitled to compensation.

“In *Anderson v Balfour*, 2 I. R. 497, the court held that a game keeper on duty, injured by a poacher, was entitled to compensation, and that the injury was the result of an accident.

“The old theory of liability, being at fault, willful negligence, etc., in order to entitle one to recover being one of the assumed wrongs that the Compensation Act corrects, the idea that an accident must be an occurrence resulting from the lack or fault or intent on the part of anybody has but little, if anything, to do with determining what constitutes an accident under the Compensation Act of Illinois.

“We think that in the light of the cases, when you construe the Act from its context, and take into consideration the spirit, purpose and intent of the Act and the wrong intended to be corrected, etc., that the old doctrine of intent precluding the idea of accident is not applicable to the doctrine of compensation; and therefore, one injured in the course of his employment by a robber, or from assault by one in some wrongful act, is so by an accident.

“From this, the Board finds that the deceased met his death on account of an accident that occurred in and arose out of the course of the employment.”

Wurtz v Chicago & A. Ry., I. B. No. 544, p. 93.

“A private watchman, employed by a railroad company, whose duty was to make the rounds of the yards, inspecting the freight house and various portions of yards, keep improper persons off the premises and prevent stealing from cars, and who had power to arrest in cases of necessity, if injured in the performance of his duty, is entitled to compensation under the Act.”

Bassett v Chicago &c Ry., I. B. No. 635, p. 120.

See *In re Harbroe* (Mass.), 111 N. E. 709.

Injury in fight.

Mich., Clark v Clark, 155 N. W. 507.

Violation of Rules:

“It seems that all the cases cited, holding that a violation of a specific order or any wilful exposition of one’s self to danger in connection with his work takes him out of the course of his employment, are based upon statutes in which there is a provision in substance to that effect. In the Illinois Act there is no provision that takes one out of the course of his employment who is injured as the result of a violation of an order; nor is there any provision that denies him compensation for an injury resulting from negligence or wilfulness. To hold that violation of specific orders, concerning the manner of doing one’s work, in the absence of any such statutory provision, takes an employee out of the course of his employment would be, if not an invasion of the province of the legislature, an exercise of judicial power and no such power is conferred on the Board by the Act.

“If the Board had power to read into the Act in this state a provision concerning wilful violation of orders, we yet would be inclined to believe that we would not be justified in adopting the theory of the respondent in this case.

“The leading case on facts similar to this case, due to the violation of orders, is the case of *Whitehead v Reeder*, 2 K. B. 48. This case was decided in 1901. It was a part of the duty of the workman in this case to sharpen his tools on a grind stone rotated by a band, driven by steam power. The workman was told not to touch the machinery. The band, however, slipped off the stone and the workman tried to replace it, and was injured in the attempt. The Court of Appeals refused to disturb the finding in favor of the workman, holding that it was not every breach of a master’s order that would terminate the servant’s employment, but that regard must be had to the character of the master’s orders. The court further said that the order did not limit the sphere of the employment so as to forbid contact with the machinery. ‘It was a

part of the workman's duty to work at the machinery, and the act of the workman in replacing the band was not so remote from his ordinary duties that it could be fairly said that it did not arise out of the employment.' We think the holding in that case is applicable to the facts in this case. So far as we are advised, this rule has never been changed by any of the courts. Taking into consideration the orders and the work to be performed, this case is taken out of the general rule that the workman cannot increase the responsibilities of his employer under the Act by voluntarily taking upon himself work which is quite outside of the character of the particular class of work which his employer has allotted him."

Reynolds v Mound City Water & Light Co., I. B. No. 952, p. 123.

"A workman injured because of an accident that is the result of the violation of some specific order concerning his work, that may occur just before his regular hours or within a reasonable time thereafter, which is in some way connected with his usual work and redounds to the protection of property of his employer or his interest, is not a volunteer in the ordinary sense of the word, but an employee."

Casparson v Munn, I. B. No. 1483, p. 151.

"Wilful misconduct" (phrase in other acts) means gross and reckless.

In re Nickerson, 218 Mass. 158, 105 N. E. 604.

Although employee procured employment through false representations, which were a misdemeanor under Penal Code, compensation was allowed for his death. (N. Y.)

Kenney v Union Ry., 166 App. Div. 497, 154 N. Y. Supp. 117.

Intoxication—Award notwithstanding.

Harvey v Gironda, I. B. July 6, 1915.

Hanson v Commercial Sash Door Co., I. B. No. 596, p. 30.

Intoxication not willful misconduct; does not bar claim.

Neroosa-Edwards Paper Co. v Ind. Com. of Wis., 154 Wis. 105, 141 N. W. 1013, Ann. Cas. 1915, B. 997.

Intoxication not bar to compensation.

Williams v Llandudno C. & C. Co., 1915, 2 K. B. 101.

State v District Court, 128 Minn. 221, 150 N. W. 623.

Drayman, returning to his van, after a two minutes' drink in a public house at midday, knocked down by motor car, injured "in course of employment."

Martin v Lovibond & Sons, 7 B. W. C. C. 243.

§ 4 "EMPLOYER."

1st—"The state and each county, city, town, township, incorporated village, school district, body politic or municipal corporation."

2nd.—"Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable corporations or associations, who has any person in service or under contract for hire"—accepting by filing notice or by presumption from extra-hazardous character of occupation.

See "Occupation" (ante). "Employee" (post).
Officer of corporation cannot be held personally.

Peet v Mills, Wash., 136 Pac. 685.

§ 5 "EMPLOYEE."

1.—"Every person in service of public bodies enumerated as 'Employers,' except officials."

Employee of state, held included in Act.

Miller v Pillsbury, 128 Pac. 327.

Employee of State Board of Agriculture and university regents of Michigan excluded.

Agler v Michigan Agric. College, 148 N. W. 341.

Employee of municipality or quasi-public municipality, such as the Sanitary District of Chicago, included.

Radigen v Sanitary District, I. B. No. 158, p. 138.

Officer: Policeman is not employee but officer.

Blynn v City of Pontiac, 151 N. W. 681.

Workman: Chemist held not to be.

Bagnall v Levinstein, 96 L. T. 184, 9 W. C. C. 100.

2.—"Every person in the service of another under any contract of hire, express or implied, oral or written."

Independent Contractor:

A painter engaged to do some sign painting on the plant of a supply company for \$50, who himself furnished the tools and materials and did the work without helpers, when he fell from scaffold and was killed, held to be an "employee," whose widow was entitled to recover compensation under New York Act.

In re Rheinwald, N. Y. App. Div. 153 N. Y. S. 598, May 14, 1915.

See *Mrs. James v Western Metal Supply Co.*, Cal. Ind. Acc. Com., Claim No. 58.

"Not including any person whose employment is but casual."

Casual employment.

In re Cheevers, 219 Mass. 244, 106 N. E. 861.

In re King, 220 Mass. 290, 107 N. E. 959.

In re Gaynor, 217 Mass. 86, 104 N. E. 339.

"Not including any person who is not engaged in the usual course of the trade, business, profession or occupation of his employer."

See:

Lyon v Windsor, 159 N. Y. S. 162.

Chappelle v Four Hundred Twelve Co., N. Y., 112 N. E. 569.

FEDERAL EMPLOYERS' LIABILITY ACT

"Employees shall not be included when excluded by the laws of the United States * * * where such laws are held to be exclusive."

See *Staley v Illinois Central Ry.*, opinion ante.

"In the light of the opinion in *Staley v Illinois Central Ry. Co.*, 268 Ill. 356, it seems to be clearly established that where a workman is working upon an instrumentality which is used both in inter-state and intra-state commerce, such employee is engaged in the furtherance of inter-state commerce, and therefore, if he is injured, his only remedy must be under the Federal Employers' Liability Act."

(Painter working on inter-boundary bridge.)

Duffy v Illinois Central Ry. Co., I. B. Aug. 14, 1915.

Where a switchman was assisting in moving empty cars from an ice shed to a place near loading platform, where the nature of the freight to be loaded therein was determined, award was granted under Compensation Act, the Board holding that the State and the Federal Act did not cover the same field, one providing for compensation by mutual agreement, and the other covering the subject of liability.

Peterson v Chicago Junction Ry. Co., I. B. July 30, 1915.

Inter-state carriage by water included in Act. (Wash.)

Stoll v Pacific Coast S. S. Co., 205 Fed. 169.

FEDERAL EMPLOYERS' LIABILITY ACT

"It is insisted by the respondent that when the services of one in the employ of a carrier, who does both intra-state and inter-state commerce, can fairly be said to be necessary for inter-state or for intra-state purposes, that the Federal Employers' Liability Act is the exclusive remedy in case of injury. In the case now being considered the work the deceased was doing can fairly be said to be necessary for either inter-state or intra-state purposes, and this without the necessity of going into details concerning the particular accident or character of employment the deceased was actually engaged in at the time. There is a line of Federal authorities that tend to support the contention of the respondent, but when carefully considered, may be differentiated from in this case. One whose employment may be either inter-state or intra-state and whose injury may or may not be the result of negligence, as we read the cases cited by the respondent, has the right to proceed either under the Federal Liability Act or the State Compensation Act. It is true when the Federal government gets jurisdiction to legislate concerning a subject its authority is exclusive. The jurisdiction the Federal government takes concerning liability of employers to their employees does not extend into the field of compensation, however. Such jurisdiction not extending into the field of compensation, the mere fact that an employee's work may be either intra-state or inter-state, does not exclude the right of the state to take up the subject at the place where the jurisdiction of the Federal government terminates.

"Federal jurisdiction is given in express terms in the Federal Act only where there is inter-state traffic, inter-state employment and negligence. If, in the absence of negligence, the Federal jurisdiction does not extend over employment that may be either intra-state or inter-state, then surely such jurisdiction has been reserved to the states; and if reserved to the states, surely an employee, whose work may be either, has the right to elect in what

FEDERAL EMPLOYERS' LIABILITY ACT

forum he will proceed in all cases where there is doubt as to the existence of negligence on the part of the employer. To hold otherwise would amount to nothing else, in a great many cases, than to deprive an employee of compensation when he had no remedy under the Federal Act.

"The spirit, intent and entire scope of the Federal Act seem merely to provide a remedy for inter-state employees only in case of negligence. The spirit, intent and policy of the Compensation Act are entirely different, and do not contemplate negligence as an element of right of recovery at all. It is a summary remedy for the payment of compensation to employees injured in the course of their employment, without reference to how the injury occurred."

Miller, Adm'x v Illinois Central R. R. Co., I. B. No. 650, p. 27.

"After a careful consideration of the record, testimony, stipulation, facts in the case and the argument of counsel, the Board reaches the following conclusions:

"*First*—That all the inferences to be drawn from the testimony and the facts fairly establish the contention that the injury arose out of and in the course of the employment. The mere fact that it was possible for the deceased to have received this injury at a time other than when he was in the employ of the respondent, is not sufficient as against the testimony of the manner in which the lever was thrown and the statements of experts that such an injury would occur as claimed. This conclusion is not reached by basing a presumption upon a presumption. If the testimony fairly tends to show the strain, injury and death, those are physical facts, and the only inference that can be said to be indulged in this conclusion is that the injury was the result of the strain.

"*Second*—The mere fact that the engine on which the deceased was working at the time it is alleged that the

FEDERAL EMPLOYERS' LIABILITY ACT

injury occurred had been handling both intra- and inter-state commerce and continued after this accident to handle both kinds of merchandise, is not controlling on the question. So far as we are able to learn, no court of last resort has yet held that because certain instrumentalities of transportation may at one time be engaged in one character of commerce, and at another time in another, constitutes the same (the engine in this case) and its operators and owners as being engaged in inter-state commerce. The controlling rule, as we understand it, takes into account and has for its basis the character of the transportation of merchandise being transported and the kind of work in which the employee was engaged at the time or immediately before and after the injury. In this case the record does not disclose that at the time or for several days before or after this particular engine was actually employed in hauling inter-state commerce, nor that the deceased at any time, unless in the way it is here alleged, was an inter-state employee. If the rule contended for by the respondent is correct, no railroad or transportation company that may have in any wise been engaged in handling any character of merchandise destined for inter-state points, would be subject to the provisions or the operation of the Workmen's Compensation Act. We believe the rule announced here is sound."

Turpin, Adm'x v Chicago & Alton R. R. Co., I. B. No. 1191, p. 205.

"The fact that along the line of a particular train of a railroad there was merchandise of an inter-state character to be handled; that just prior to the occurrence of the accident the crew and train had been handling inter-state packages or cars; and that it was their custom to handle whatever merchandise was delivered to them, whether inter-state or otherwise, does not stamp such train and its employees as engaged in inter-state commerce.

FEDERAL EMPLOYERS' LIABILITY ACT

"If the parties are not in any wise engaged in inter-state commerce, then the Federal Employers' Liability Act does not apply.

"The policy of the state of Illinois is to be found in the Compensation Act and requires payment to employees in case of accident growing out of and in course of the employment without reference to the doctrine of negligence."

Blauvelt v Chicago & Alton R. R. Co., I. B. No. 939, p. 181.

"Workmen's Compensation Act of Illinois applies to employees injured while engaged in inter-state commerce; such Act is not in conflict with the Federal Act and was not designed to cover the same field.

"Act of Illinois and the Federal Act are not in conflict, the Federal Act being designed to operate upon and regulate commerce between the several states, while the Workmen's Compensation Act merely provides for compensation for any injury suffered to an employee."

Neal v Illinois Central R. R. Co., I. B. No. 757, p. 125.

Norris v Illinois Central R. R. Co., I. B. No. 458, p. 58.

Acceptance of compensation under State Act bars action under Federal Act.

Mitchell v Louisville &c. R. R., 194 Ill. App. 77.

FEDERAL EMPLOYERS' LIABILITY ACT

Where the injured man was concededly engaged in inter-state commerce, so that if the injury had been due to the employer's negligence he would of necessity have had recourse to the Federal liability statute, but where there was no negligence, the injury being due to pure accident, it was not within the Federal law, and the court held that it was a case in which congress had not yet acted, so that the state law would control, and affirmed an award made in the claimant's favor by the compensation commission.

Winfield v New York Central R. R. Co., Supreme Court of New York, 168 Appellate Division, 351, 1915, 153 N. Y. Supp. 499.

Act is not superseded by Federal Act. Court of Appeals, N. Y.

Winfield v N. Y. Cent. & H. R. R. Co., 216 N. Y. 284, 110 N. E. 614, Ann. Cas. 1916, A. 821.

"In the case of *Winfield v New York Central & Hudson R. R. Co.*, we held that the claimant, although engaged in inter-state commerce, was not excluded by section 114 of the Workmen's Compensation Law from claiming benefits under that law, where the injury was in no way attributable to the negligence of the employer, but was as to him wholly accidental."

Moore v Lehigh Valley R. Co., 154 N. Y. S. 622.
See *Pedersen v D. L. & W. R. Co.*, 229 U. S. 146,
33 Sup. Ct. 648, 57 L. Ed. 1125, Ann. Cas.
1914, C. 153.

Shanks v D. L. & W. R. Co., 214 N. Y. 413, 108 N. E. 644.

Fairchild v Pennsylvania R. R., 155 N. Y. S. 751.

Okrzezs v Lehigh Valley R. R., 155 N. Y. S. 919.

Nelson v Illinois Central R. Co., (Iowa) 155 N. W. 169.

Rounsaville v Central Ry. Co., N. Y., 94 Atl. 392.

Jensen v Southern Pac. Co., N. Y., 109 N. E.

"Federal Employers' Liability Act—Practitioners' Manual," Walgren.

FEDERAL EMPLOYERS' LIABILITY ACT.

“The Ohio Workmen’s Compensation Act does not apply to employers and to their employees engaged exclusively in inter-state commerce, but it applies to those engaged in both inter-state and intra-state commerce to the extent that their mutual connection with intra-state work may and shall be clearly separable and distinguishable from inter-state or foreign commerce, upon the election of both employer and employees to be governed by its provisions.”

Conrole v Norfolk & W. Ry., U. S. Dist. Ct., 216 Fed. 823.

Failure of inter-state commerce railroad to comply with safety appliance acts, renders it liable under Federal Liability Act, even though employee is injured while engaged in intra-state traffic.

Rigsby v Texas Pac. R. R., U. S. Sup. Ct. 1916.

All railroad employees covered by Act. (Wis.)

Minneapolis R. R. Co. v Industrial Com., 153 Wis. 552, 141 N. W. 1119, Ann. Cas. 1914, D. 655.

Alien: Included as employee.

“The term ‘persons’ used in the Fifth Amendment is broad enough to include every human being within the jurisdiction of the Republic. A resident, alien born, is entitled to the same protection under the law that a citizen is entitled to. He owes obedience to the laws of the country in which he is domiciled, and as a consequence is entitled to the equal protection of the law.”

“The Constitution of the State of Illinois of 1870, article II, in that part known as the ‘Bill of Rights,’ is similar to the Federal Constitution, in that it uses the word ‘person’ instead of ‘citizen.’ We agree with the contention of the claimant that the provisions of our Compensation Act allowing to heirs and widows of deceased persons compensation for death of one on whom they depend in no way affects or conflicts with the spirit or letter of either the Federal or State Constitutions.

“There is a provision in the Statutes of the State of Illinois which we do not attempt to quote but which allows aliens to acquire and hold personal property, the same as natural born citizens, and that casts the title to personal property of dying aliens upon their heirs, the same as natural born citizens.

“We desire to quote from an opinion of the Judicial Committee of the Privy Council of the Province of British Columbia, reported in Butterworth’s Compensation Cases, Volume 5, Canadian Section, page 728, the following:

‘Can the applicant, who is the legal representative of the deceased workman, and who is a resident in the province of British Columbia, obtain compensation under the Workmen’s Compensation Act, dependent of the deceased being an alien resident in a foreign country at the time of the accident, out of which the claim for compensation arose, and ever since?’

‘This question was answered by the trial court in the affirmative, and upon an appeal to the Court of Appeals

of British Columbia was reversed, and on appeal from the decision of the Court of Appeals to the Privy Council, the opinion of the Court of Appeals was reversed and the opinion of the trial court, sustaining the contention that compensation could be paid to an alien beneficiary, was sustained.'

"We, therefore, do not find any substantial authority or reason for the position of the respondent in this case on this phase of the case.

"Therefore, the Board finds that an alien non-resident beneficiary of a person who met his death because of an injury that arose out of and in the course of his employment, under the terms and provisions of the Workmen's Compensation Act of Illinois, is entitled to compensation the same as if she were an actual citizen and resided in the state of Illinois."

Bishop v Iroquois Iron Co., I. B. No. 762, p. 108.

Aliens—Diversity of Citizenship:

Congress not having legislated on the subject covered by Act, the latter controls, and can not be avoided by petition for removal to Federal Courts on ground of diversity of citizenship. (Wash.)

Stoll v Pac. Coast S. S. Co., 205 Fed. 169.

Alien beneficiaries held within Federal Employers' Liability Act.

See: "Fed. Emp. Liab. Act—Manual"

Minor: Included.

“Who are legally permitted to work under the laws of the state, and, who for the purpose of this Act shall be considered the same and have the same power to contract, receive payments, and give quittances therefor, as adult employees.”

Violation of Child Labor Act would seem to exclude operation of this Act.

As to construction of Child Labor Act, see:

Stafford v Republic Iron & Steel Co., 238 Ill. Sup. 371.

Jefferson Theater Program Co. v Crejezuk, 125 Ill. App. 1.

Struthers v People, 116 Ill. App. 481.

People v Ewer, 141 N. Y. 129, 25 L. R. A. 794.

The common law disability of minor to contract under Act is properly cared for by statute, and infancy is a personal privilege which can be taken advantage of by the minor himself only.

Hoey v Superior Laundry Co., N. J., 88 Atl. 823.

Award to minor's guardian.

Courter v Simpson Construction Co., I. B. No. 21, p. 5.

Boyd v Pratt, 230 Pac. 371.

Minor, when not “workman.”

Hillestad v Industrial Ins. Com., 80 Wash. 426, 141 P. 913.

Minor's election to accept Act does not bar right of action by parents.

King v Viscoloid Co., 219 Mass. 420, 106 N. E. 988.

Notice to minor must be given to parent or guardian. Posting insufficient. N. J.

Troth v Millville Bottle Works, N. J. Sup. 1031.

Extra-territorial effect.

Contract of employment in foreign state.

Pensabene v F. & J. Auditore Co., 140 N. Y. Sup. 266; 138 N. Y. S. 947; 78 Misc. Rep. 538.

In re American Mut. Liab. Ins. Co., 215 Mass. 480, 102 N. E. 693.

Stoll v Pacific Coast S. S. Co., 205 Fed. 169.

Johnson v Nelson, 128 Minn. 158, 150 N. W. 620.

American Radiator Co. v Rogge, 86 N. J. L. 436, 92 Atl. 85.

Gould's Case, 215 Mass. 480, Ann. Cas. 1914, D. 377.

Post v Burger & Gohlke, 216 N. Y. 544.

Removal to U. S. court.

Benton v Tietgen & Lang Dry Dock Co., 219 Fed. 763.

§ 6 DAMAGES.

“No common law or statutory right to recover damages for injury or death of employee covered by Act, while engaged in the line of his duty, available against employer—other than compensation provided for by Act.”

See: “Defense”—Safety Acts, ante.

Remedy is exclusive.

Shade v Ash Grove Cement Co., 93 Kan. 257, 139 Pac. 1193, 144 P. 249.

Peet v Mills, 76 Wash. 437, 136 Pac. 685, 26 A. & E. Encyc. L. 621.

McRoberts v National Zinc Co., 93 Kans. 364, 144 P. 247.

Meese v N. P. Ry., 206 F. 222.

§ 7 COMPENSATION.

“Amount of compensation which shall be paid for an injury to an employee resulting in death.”

(a) “If the employee leaves any widow, child or children whom he was under legal obligation to support at time of his injury.”

(b) “If employee leaves any widow, child, parent, grandparent or other lineal heir, to whose support he had contributed within four years previous to the time of his injury.”

(c) Collateral heirs dependent upon earnings of deceased.

DEPENDENCY.

Compensation is payable only to such kin as prove dependency by legal obligation or contributions.

Matecny v Vierling Steel Works, 187 Ill. App. 448.

Obligation ceases on death of beneficiary, and this fact is to be considered in awarding lump sum.

Id.

Dependency must be proved.

Stevenson v Illinois Watch Case Co., 186 Ill. App. 418.

Dragovich v Iroquois Iron Co., 261 Ill. Sup. 478.

Staley v Illinois Central R. Co., 186 Ill. Sup. 593.

‘Dependent’ means for the ordinary necessities of life for a person of that class and position.

Turner v Miller, 3 B. W. Comp. Cas. 305.

Compensation may be had although contributions went into common fund from which dependents received support.

Hodgson v West Stanley Colliery, A. C. 229, 79 L. J., K. B. N. S. 356.

Finding of dependency, when any evidence supporting, final.

Hendricks v Seeman Bros., 155 N. Y. S. 638.

An award to a dependent is a vested right; in case of his death, personal representative is entitled thereto.

State ex rel. Mundig v Ind. Com. of Ohio, Sup. Ct. 1916.

United Collieries Co. v Simpson, Eng. App. Cas. 1909, 383.

Dependency.

Right of survivor is independent of decedent's control, release of latter being no bar.

Cripp's case, 216 Mass. 586, 104 N. E. 565, Ann. Cas. 1915, B. 828.

Williams v Vauxhall Colliery Co., (1907) 2 K. B. 422.

Payments to decedent are not to be deducted from award to beneficiary.

Nichol's Case, 217 Mass. 3, 104 N. E. 566, Ann. Cas. 1915, C. 862.

Dependency is an issue of fact.

In re Gallagher, 219 Mass. 140, 106 N. E. 558.

In re Nelson, 217 Mass. 467, 105 N. E. 357.

In re Bentley, 217 Mass. 79, 104 N. E. 432.

In re Herrick, 217 Mass. 111, 104 N. E. 432.

Miller v Public Service Co., N. J. 85, Atl. 1030.

Finding by commission that claimant is a dependent on deceased is one of fact and final.

Appeal of Hotel Bond Co., 89 Conn. 143, 93 Atl. 245.

Petrozino v American Mutual Liability Co., 219 Mass. 498, 107 N. E. 370.

In re Murphy, 218 Mass. 278, 105 N. E. 278.

Widow living apart.

North Western Iron Co. v Industrial Com., 154 Wis. 97, 142 N. W. 271.

In re Fierro's Case, Mass., 111 N. E. 957.

Mother.

Krauss v Fritz, N. J., 93 Atl. 578.

Pinel v Rapid Ry. System, 150 N. W. 897.

Father—excluded.

Dazy v Apponaugh Co., R. I., 89 Atl. 160.

Half-brother—Mass.

Kelly's Case, 111 N. E. 395.

Dependency.

Blanz v Erie R. R. Co., 85 Atl. 1030.

Miller v Public Service Co., 85 Atl. 1030.

Dazy v Apponaug Co., 89 Atl. 160.

Reardon v P. & R. R. Co., N. J., 88 Atl. 970.

Batista v West Jersey & R. Co., N. J., 88 Atl. 954.

Northwestern Iron Co. v Industrial Com. of Wisconsin, 142 N. W. 271.

Coakley v Coakley, Mass., 102 N. E. 930.

Smith v National Sash & Door Co., Kans., 153 P. 533.

Miller v Riverside Storage Co., Mich., 155 N. W. 462.

Finn v Detroit & Ry., Mich., 155 N. W. 721.

Fairchild v Pennsylvania R. R., 155 N. Y. S. 751.

Walz v Holbrook, 155 N. Y. S. 703.

Contributions—Receipts of express company of remittances to foreign country, held establishing fact of contributions.

Green v Marquette Cement Co., I. B. June 26, 1915.

See *Landolina v Victor Chem. Works*, I. B. No. 908, p. 92.

Evidence held sufficient.

Hult v Commonwealth Edison Co., I. B. No. 425, p. 8.

At odd times sufficient.

Salin v Sherwin-Williams Co., I. B. No. 497, p. 13.

Stimber v Sangamon Coal Co., I. B. No. 500, p. 18.

Son, healthy adult, may recover as beneficiary.

Proulx v Hudson & Sons, I. B. No. 255, p. 45.

The fact that pecuniary assistance received is much less than minimum amount of compensation provided for, does not bar award.

Appeal of Hotel Bond Co., 89 Conn. 143, 93 A. 245.

Dependency.

Lord Shaw:

“My Lords, what is the value of presumption in relation to the ascertainment and settling of truth in matters of fact? The legal value in such a relation is that it forms a guide where doubt exists; it assists elucidation where inferences might conflict; and it settles in one direction the balance of the judgment in favor of the establishment of truth which is only dimly or partially ascertained. But where the facts are ascertained, where there is no difference as to the inference which flows from them, and where the truth is plain and proved, I am at present at a loss to understand what is the value or cogency or appropriateness of presumption. And I view with much disrelish the idea that they can be invoked for the purpose of affirming that a thing is true in law which is not true in fact. The present case appears to me plainly to illustrate this position. To put it in a word, this wife did not depend upon her husband's earnings.”

Wife who had for 22 years clearly asserted and definitely maintained her complete independence of her husband, held not a dependent.

New Monckton Collieries v Keeling, 4 B. W. C. C. 332.

Contra Coulthard v Consett Iron Co., 8 W. C. C. 87.

INSTALLMENTS.

Equal to one-half of average earnings—to be paid at same intervals as wages.

Payments to be made at employer's option to personal representative or beneficiaries in shares according to distributee's respective dependency.

§ 8 COMPENSATION.

“Amount of compensation which shall be paid for injury not resulting in death.”

Employer to provide first aid, medical, surgical and hospital services. Not longer than eight weeks. Not to exceed \$200.

When found necessary to procure services of physician other than the one furnished by employer, extra allowance will be awarded.

Cegreleski v Lehon Company, I. B. No. 591, p. 35.

Allowance made for services and treatment for loss of teeth.

Kandaleto v Swift & Co., I. B. No. 495, p. 24.

Surgical operation, allowance made for.

Quale v Hamilton, I. B. No. 587, p. 6.

“The word ‘provide’ means ‘to furnish,’ and in the event the employer fails to furnish such medical aid then such employer is liable to the extent of the doctor’s bill, within the limitation fixed in such paragraph. The employee is responsible for medical bills only in the event that medical services have been offered by the employer and rejected by the employee. However, the Board does not agree with the applicant as to the amount of the physician’s bill in this case. All bills for medical and hospital services authorized under this Act should be based on reasonable and customary rates, and the fact that the bills are to be paid by the employer should not act as an incentive for physicians to make unreasonable charges. This Board will scrutinize with the same degree of care all medical bills in connection with compensation claims under this Act, as any and all other fees and charges thereunder.

“From the testimony before the Board the fair and reasonable charge for medical and surgical services in this case would be about ninety-six (\$96.00) dollars.”

Nowitz v Cohn, I. B. No. 834, p. 90.

(b) Temporary total incapacity.

(c) "Any serious and permanent disfigurement to the hand, head or face."

"The term 'serious and permanent disfigurement' means disfigurement that is an actual disability and any disfigurement of the head, hand or face that in any wise interferes with not only a man's ability actually to work but makes his less liable or able to procure employment or tends to make him timid and less aggressive with reference to that matter of certain employments, is serious and permanent and actually disables. It is universally known that a man whose face, head or hand are so scarred as to be repulsive, will find it difficult to procure a job, where he is required to come into contact with the public in the performance of his duties. It is also a well known fact that one who is conscious of the fact that he can not make a reasonably good appearance or that is in any wise marked or disfigured, becomes less aggressive and less liable to procure work in many of the well known lines of employment. The fact that this claimant is obtaining practically the same wages as before is not material, as we believe, in this case."

Sturma v Geneal Chemical Co., I. B. Oct. 29, 1915.

"The test is not whether claimant's earning capacity in the employment in which he was engaged at the time of the accident and disfigurement is less, but whether the latter would affect his earnings or ability to acquire a job in some other line of employment."

Hrusovsky v Horwein & Co., I. B. June 10, 1915.
See *Meesis v United Sanitary Dairy Co.*, I. B.
No. 209, p. 78.

Watters v Kroehler Co., 187 Ill. App. 548.

Disfigurement by loss of tips of two fingers warrants award.

Stevenson v Illinois Watch Case Co., 186 Ill. App. 418.

Disfigurement of hand, although not affecting earnings, warrants recovery.

Watters v P. E. Kroehler Mfg. Co., 187 Ill. App. 548.

Loss of two teeth which have been replaced by employer does not warrant compensation.

Kandaletto v Swift & Co., I. B. No. 495, p. 24.

“To entitle one to compensation for disfigurement, the disfigurement must be of such a serious and permanent character as either directly or indirectly to impair the earning capacity or ability to acquire work in the labor markets of the world.

“The disfigurement to sound in compensation must affect the earning capacity of the employee in the labor markets of the world and not alone in the employment in which he was engaged.”

Billman v Two Rivers Coal Co., I. B. No. 753, p. 69.

“A scar on side of head about three-quarters of an inch wide, is such disfigurement as to affect earning capacity as it makes less aggressive and more timid.

“Disfigurement, to entitle applicant to compensation, must in reality disfigure to the extent that it will interfere with his obtaining employment.”

Harpestad v Alexander, I. B. No. 503, p. 14.

“The loss of a tooth that has been replaced by a gold crown does not constitute a disfigurement of the face under Act.”

Niemark v West Coast Roofing Co., I. B. No. 639, p. 56.

(d) "Partially incapacitated."

Injury includes any injury or disease causing incapacity for work or impairing ability to earn wages.

Johnson v London Guar. Co., 217 Mass. 388, 104 N. E. 735.

Disability—capacity in other employment—rule.

Mellen Lumber Co. v Industrial Com. of Wis.,
154 Wis. 114, 142 N. W. 187.

(e) "Injuries in schedule:"

Loss of thumb—fingers—or the permanent and complete loss of use—phalange.

Watters v Kroehler Mfg. Co., 187 Ill. App. 548.

"In order that there might be uniform ruling, the Board has held that the loss of a part of the bone of any given phalange constitutes the loss of that phalange, and that the loss of more than one phalange constitutes the loss of the finger."

Winters v Quedriga Mfg. Co., I. B. June 23, 1915.

Reading v Charvat, I. B. June 28, 1915.

"It is possibly true that were applicant to grip nothing but large objects, that would not necessitate the flexion of the fingers to any great degree, that finger would be of considerable assistance to him. However, the Board is of opinion that a fair test of what use a given function is to a man is the amount of use he is able to get from that function in the line of work he is following at the time of the accident. This man is a structural iron worker, and for the purposes of that employment the man has suffered a total and complete loss of its use.

"His wages being \$29.92 per week, the award for permanent and complete loss will be \$12.00 for 35 weeks."

Moffett v Thompson Starret Co., I. B. July 14, 1915.

“The loss of a part of the bone of any phalange constitutes the loss of that phalange for the purpose of the Workmen’s Compensation Act.”

Palmer v Scheidenheim, I. B. No. 900, p. 135.

“The loss of the first, second, third and fourth fingers of a right hand with palm and thumb remaining intact constitutes a permanent and complete loss of the hand under paragraph (e), section 8.”

Swickard v Arrow Motor Cartage Co., I. B. No. 1351, p. 179.

“Considering the matter carefully in conference, the Board is of the opinion that the loss of any part of the bone of the phalange of any finger, thumb, or toe, under the terms and provisions of the Act, is the loss of such phalange, notwithstanding the fact that no specific provision is made concerning the same. This contention, the Board thinks, is consistent for the reason, first, that the whole spirit, intent and nature of the Act make provisions for the payment of compensation; second, because any injury that results in the loss of any part of the bone of the first phalange of the fingers, toes, or thumbs, must, of necessity, affect one’s earning capacity.”

Thompson v Van Cleave, I. B. No. 894, p. 107.

“The Act provides that the loss of more than one phalange shall be considered as the loss of the entire finger, and logically, the loss of less than one phalange shall be considered as the loss of one-half of such finger.”

Rozmieski v Victor Mfg. Co., I. B. No. 198, p. 33.

Fingers—injury to—see:

Rozmierski v Victor Mfg. Co., I. B. No. 198, p. 33.

Klein v Johnson & Sons Furn. Co., I. B. No. 357, p. 85.

McClelland v Allith Prouty Co., I. B. No. 436, p. 116.

Di Grazia v Novelty Candy Co., I. B. No. 590, p. 36.

Brosi v Woelfel Leather Co., I. B. No. 699, p. 50.

Pulford v Packard Motor Car Co., I. B. No. 901, p. 86.

Finger:

Fortino v Merchants' Disp. Transp. Co., 156 N. Y. S. 262.

The loss of more than one phalange of a finger or toe is equivalent to the loss of the entire member.

McClelland v Allith Prouty Co., I. B. No. 436, p. 116.

See *Helme v Middlesex, C. P.*, 84 N. J. L. 531.

Banister Co. v Kriger (N. J.) 85 A. 1027.

Nitram Co. v Creagh, (N. J.) 86 A. 435.

In re Ethier, 217 Mass. 511, 105 N. E. 76.

Combined award for total and partial disability from crushing of finger, allowed.

Nitram Co. v Creagh, N. Y., 86 Atl. 435.

See *Helm v Middlesex*, Common Pleas, 87 Atl. 72.

Mellen Lumber Co. v Industrial Com. of Wis., 142 N. W. 187.

Banister Co. v Kriger, N. J., 85 Atl. 1027.

In re Meley, 219 Mass. 136, 106 N. E. 559.

Loss of a great toe—one toe—phalange.

Walford v Pape & Loose, I. B. No. 471, p. 59.

Loss of a hand or the permanent and complete loss of its use.

Holt v Wood Brothers, I. B. No. 512, p. 10.

Loss of an arm or the permanent and complete loss of its use.

Giachas v Cable Co., 190 Ill. App. 285.

Chally v Wiener, I. B. No. 700, p. 49.

Schuster v Schnackenberg, I. B. No. 299, p. 40.

Injury to shoulder.

Bostedo v The Fair, I. B. No. 506, p. 15.

Chally v Wiener, I. B. No. 700, p. 49.

Loss of a foot or the permanent and complete loss of its use.

Loss of a leg or the permanent and complete loss of its use.

“It is reasonably certain that a man who is injured and is left with a crooked and permanently abnormal leg has been seriously injured in his earning capacity even for day labor. The Board is of opinion that claimant has been injured to the extent of fifty per cent of his earning capacity. However, so long as the claimant remains in the employ of respondent, he is entitled to only one half the difference of his former and present wages, or 37½ cents a day. For the balance of the 416 weeks he would be entitled to \$3.93 a week, which would equal one-half the difference between what he did and what he can earn after the injury.

Waters v Kewanee Boiler Co., I. B. April 10, 1915.

See *Burgnon v Edgewater Coal Co.*, I. B. No. 582, p. 86.

Mustaccio v Simpson Construction Co., I. B. No. 273, p. 60.

Judgment allowing more for a stiffened ankle than schedule allowance for amputation between knee and ankle, reversed.

Rakiec v Del. Lack. & R. R., N. J., 88 Atl. 953.

“Loss of the sight of an eye.”

Forrest v Roper Furniture Co., 187 Ill. App. 504.

“Where, as a result of an injury, an employee lost fifty per cent vision in one eye and his earning capacity is thereby impaired, he is entitled to one-fourth of his average weekly wages, the same being based upon one-fourth loss of vision, the injury as a matter of law having affected his earning capacity to that extent.”

Csuprinski v Mechanical Mfg. Co., I. B. No. 557-A, p. 105.

See *Struple v Bishop*, I. B. No. 487, p. 19.

Beauregard v Tichener & Co., I. B. No. 69, p. 8.

Pavich v Illinois Bridge Co., I. B. No. 595, p. 16.

Kinstanski v Illinois Steel Co., I. B. No. 702, p. 127.

Moeller v Bereda Mfg. Co., I. B. No. 175, p. 66.

Feldman v Braunstein, 93 Atl. 679.

In re Brauconnier, Mass., 111 N. E. 792.

Infectious disease of eye.

McCoy v Michigan Screw Co., 147 N. W. 572.

Cline v Studebaker Corp., Mich., 155 N. W. 519.

Evidence held sufficient to show injury as charged resulting in loss of sight because of weakened condition of eye from previous accident, reducing damages.

Forrest v Roper Furn. Co., 187 Ill. App. 504.

Loss of both hands—arms—feet—legs—eyes—or any two thereof—to constitute total and permanent disability.

“We take it that the statute must be for those purposes liberally construed. That seems to be the purpose and intent and policy declared in the Act. In determining what incapacity means, it would seem the policy of the Act means nothing more nor less than incapacity for following some ordinary employment in the ordinary way. A man who has lost one eye and can see no more out of the other than the evidence discloses this man can see, for all practical purposes is wholly and permanently incapacitated for work.”

Mielke v Burge Machine Co., I. B. July 2, 1915.

(f) Complete disability which renders wholly and permanently incapable of work.

Injury to brain.

Kerens v Donnewald Coal Co., 271 Ill. Sup. 124.

“The question as to whether or not injured employee had a predisposition to hernia, or a weakness toward hernia, is not material, when an accident occurs which brings forth a protrusion of the intestines and causes disability. It is an accident within the meaning and scope of Act.”

Fobes v Killeen, I. B. No. 600, p. 68.

“Notwithstanding an employee may have a predisposition of hernia, and even a slight, or latent hernia, a serious hernia brought on while in the course of and occurring during his employment is an ‘accident’ within the meaning of Act.”

Hasenstole v Chicago House Wrecking Co., I. B. No. 551, p. 62.

Hernia.

Dombkowski v Squire Dingee Co., I. B. No. 608, p. 51.

Mike v Sullivan-Daly Construction Co., I. B. No. 654, p. 31.

Sciatica.

Isidora v Rockford Gas Light & Coke Co., I. B. No. 555, p. 42.

Hydrocele.

Jasimski v Armour & Co., I. B. No. 594, p. 34.

Epilepsy.

Talaczuski v Armour & Co., I. B. No. 165, p. 48.

Septicemia—Blood poisoning.

Proulx v Hudson & Sons, I. B. No. 255, p. 45.

Nervous shock.

Isidora v Rockford Gas Light & Coke Co., I. B. No. 555, p. 42.

Injury to head.

Golbash v Burns Lumber Co., I. B. No. 692, p. 77.

Scott v Scully Steel & Iron Co., I. B. No. 711, p. 89.

Impairment of health is personal injury.

Hurle's case, 217 Mass. 223, 104 N. E. 336, Ann. Cas. 1915, C. 919.

Loss of vision—optic neuritis from coal tar gas, included.

Hurle's case, 217 Mass. 223, 104 N. E. 336, Ann. Cas. 1915, C. 919.

Over-exertion—aggravating heart disease and leading to death—injury suffered in course of employment.

In re Brightman, 220 Mass. 7, 107 N. E. 527.

In re Fisher, 220 Mass. 581, 108 N. E. 361.

Over-exertion—apoplexy—included. (England.)

Barnabas v Bersham Colliery, 4 B. W. C. C. 119.

Lunacy—caused by injury and causing suicide, included.

In re Sponatski, 220 Mass. 526, 108 N. E. 466.

Neurotic state—which employee might have thrown off—included.

In re Hunnewell, 220 Mass. 351, 107 N. E. 934.

Hemorrhage—from pushing post against furrowing machine—included.

Voorhees v Smith & Co., 86 N. J. L. 500, 92 Atl. 280.

Nervous shock.

Yates v South Kirby Colliers, 3 B. W. C. C. 418.

Eaves v Blaenclydath Colliery Co., 100 L. T. 747, 2 B. W. C. C. 329.

Poison.

Higgins v Campbell, 1904, 1 K. B. 328.

Frost bites.

Morgan v Couchman, 1911, 1 K. B. 351, 4 B. W. C. C. 32.

Sunstroke.

Morgan v Zenaida, 1909, 25 T. L. R. 446, 2 B. W. C. C. 19.

Lightning stroke.

Andrews v Failsworth Ind. Soc., 1904, 90 L. T. 7611.

Gases inhaled.

Broderick v London Council, 1908, 2 K. B. 807.

Strain and rupture.

Timmings v Leeds Forge Co., 16 T. L. R. 520.

Paralysis.

Frey v Kerens-Donnewald Coal Co., 110 N. E. 824.

Gonorrhea.

Cline v Studebaker Corp., Mich., 155 N. W. 519.

Fracture—leading to bed sore, causing blood poisoning and death—injury was proximate cause.

In re Burns, 218 Mass. 8, 105 N. E. 601.

Failing physical powers, independent of accident, not bar to compensation.

Duprey v Maryland Casualty Co., 219 Mass. 189, 106 N. E. 686.

Weak heart.

In re Madden, Mass., 111 N. E. 379.

Test of total disability—work of same character.

Mellen Lumber Co. v Ind. Com. of Wis., 154 Wis. 114.

(g) In case death occurs before total payments equal death benefit—difference to be paid to heirs entitled to compensation.

“Another contention of the respondent is that from the title of the Act, and from the wording of certain sections thereof by the terms ‘injury to employees resulting in death’ and ‘injury not resulting in death,’ etc., the legislature intended the payment of compensation in death cases only where the death was the immediate result of the injury and not in cases where death *resulted* from the injury.

“We are of the opinion that these contentions in no wise or sense limit the general doctrine of compensation. If the use of these words do so limit the application of the doctrine then the whole theory of compensation is wrong. There is no reason why dependents of one who meets death at the time of the injury should be paid compensation and the dependents of one who dies as the result of injuries should not be paid compensation. If our compensation law means this, it is unreasonable and the courts will not permit it to stand. The words ‘injury resulting in death’ merely mean death at any time as the result of such injury. In other words, if death resulted at all from the injury, the limit of time in no way affects the right of dependents to compensation; and we do not believe that the legislature so intended or that the act is susceptible to any such construction.”

Bishop v Iroquois Iron Co., I. B. No. 762. p. 108.

(h) Compensation in no event to exceed 50 per centum of average weekly wage or \$12 per week in amount.

§ 9 LUMP SUM PAYMENT.

Provision for petition for lump sum is complete in itself, independent of Practice Act.

Staley v Ill. Central Ry. Co., 186 Ill. App. 593.

Lump sum awarded to mother, 58 years of age and an invalid, who might not live during the period of installments, set aside.

Matecny v Vierling Steel Works, 187 Ill. App. 448.

Petition for lump sum—when proceeding under section 10 not necessary.

Staley v Illinois Central Ry., 186 Ill. App. 593.

See *New York Ship Building Co. v Buchanan*, 87 Atl. 86.

Long v Bergen County Court, 86 Atl. 529.

Finding must state method of computing and reasons.

N. J.

Mackett v Ashton, 84 N. J. L. 452, 90 A. 127.

Bailey v U. S. Fidelity & G. Co., 155 N. W. 237.

§ 10 COMPUTATION.

Basis for computing compensation.

(a) Annual earnings—if in employment of same employer continuously during year next preceding injury.

(b) Employment by same employer to mean in grade at time of accident—uninterrupted by unavoidable absence.

(c) Annual earnings of persons of same class.

(d) 300 times average daily earnings.

(e) Number of actual working days.

“The fallacy consists in regarding these statutory awards for permanent injury payments for the employee's time as though the disability were temporary only, whereas they are in reality a statutory method of ascertaining the damages by a specified multiple of the weekly wage, payable normally in weekly installments, and reduced to present value if commuted to a lump sum.”

Helme v Middlesex, 87 Atl. 72.

“Average weekly earnings” do not restrict right of dependent on length of service, and employment by the day is within English Act.

Leonard v Baird, 3 Sc. Sess. Cas. 5th Ser. 890.

Where plaintiff, a single man, 23 years of age, whose annual earnings amounted to \$509.95, was injured, so that his right arm was amputated two-thirds of the way from the elbow to the wrist, and a subsequent amputation became necessary from blood poisoning, he being totally incapacitated for six months—in action for recovery under clauses (b) and (d), the time on which to compute recovery being $7\frac{1}{2}$ years, and half of the amount which would have been earned on that basis being \$1,912.26, a finding of the court for \$1,749.90—amount reached by deducting probable earnings in some suitable employment in that period and adding amount due under clause (b) and probable doctors' fees of \$225—will not be disturbed on appeal.

Giachas v Cable Co., 190 Ill. App. 285.

“It is not a question of just what was being paid at the time of the injury, but compensation must be based upon the scale paid in the grade of work he was actually doing. The minimum wages paid for erecting engineers was \$21 per week, and we are therefore disposed to believe that compensation should be paid upon the basis of the earnings of \$21 per week.”

Metke v Burge Machine Works, I. B. July 2, 1915.

Where employment is irregular.

Gillen v Ocean Accident Co., Mass., 102 N. E. 346.

Offer of employment by employer, pending litigation, has little weight on question of future earnings.

Giachas v Cable Co., 190 Ill. App. 285.

Finding of trial court as to amount of probable future earnings, which is matter of conjecture, will ordinarily not be disturbed on appeal.

Giachas v Cable Co., 190 Ill. App. 285.

Tips included.

Penn v Spiers, 1 K. B. 766.

“The mere fact that an employer gives an employee employment after an injury is not binding or conclusive as to the character of the earning capacity of the employee.”

Waters v Kewanee Boiler Co., I. B. No. 736, p. 169.

Where an instructress, employed by the city, drawing a salary of \$60.00 per month, has not worked a full year, the presumption is that persons doing the same work who worked by the year received the same wages per month that she received.

Shannessy v City of Chicago, I. B. No. 884, p. 160.

“If no amount is payable under paragraph (a) or (b) of this section and the employee leaves collateral heirs dependent at the time of the injury to the employee upon his earnings, such a percentage of the sum provided in paragraph (a) of this section as the average annual contributions which the deceased made to the support of such collateral dependent heirs during the two years preceding the injury bear to his earnings during such two years.”

In this case, from the best estimate the Board can make from the evidence, the deceased earned four hundred (\$400.00) dollars a year. His annual contributions to the sister were three hundred and twelve (\$312.00) dollars. Under this section, the average annual contributions being three hundred twelve (\$312.00) dollars, and the earnings for the two years being eight hundred (\$800.00) dollars, and the amount earned according to the terms of the paragraph referred to in the above section being sixteen hundred (\$1,600.00) dollars, the collateral heir, the sister, is entitled to 312-800 of \$1,600, or six hundred twenty-four (\$624.00) dollars. This computation is put upon the basis that the terms “such a percentage of the sum provided in paragraph (a) of this section as the average annual contributions which the deceased made,” etc., mean nothing more nor less than the contributions for one year. (“Average annual contributions” means the contributions for one year, as they may be averaged.) Hence, the above computation.

Ewing v Wittenberg Co., I. B. No. 933, p. 100.

Double compensation not allowed.

Kandalets v Swift & Co., I. B. No. 496, p. 24.

That applicant returned to work immediately after the accident and received the same compensation as before, is not a test of disability. The test is not what an employer gives a man to do after an injury, but what he is able to do in the same or some other suitable employment after the accident. Disability continued although no compensation was due because applicant received his regular wages during that period.

Flackenberg v Chicago Nipple Mfg. Co., I. B.
Oct. 15, 1915.

§ 12 EXAMINATION.

Claimant to submit to examination by medical practitioner or surgeon, selected by employer.

See p. 244.

§§ 13-14 INDUSTRIAL BOARD.

Creation—Appointment—Term of office—Salary.

§ 15 JURISDICTION.

Operation and administration of Act.

See p. 250.

§ 16 PROCEDURE.

Rules and orders—Prima facie valid—Administration of oaths—Subpoena—Examination of witness—Transcript of testimony.

Hearsay evidence—award may be made on.

Carroll v Knickerbocker Ice Co., 155 N. Y. S. 1.

Fixing of fees.

Physicians' and nurses' fees—Fixing fair value.

City of Milwaukee v Miller, 154 Wis. 652, 144 N. W. 188.

Attorney's fee. Board will not allow.

Cegreiski v Lehon Co., I. B. No. 591, p. 35.

§ 17 RECORD.

Blank forms—Record of notices of declinations and withdrawals—Of proceedings and awards.

§ 18 DETERMINATION.

Board to determine all questions arising under Act.

(c) Examination by physician of Board.

“In this case there was a great deal of medical testimony concerning the effects of an injury on the general physical condition of the claimant and upon the possibility of the accident which he received producing such a shock to the nerves as would cause a permanent and serious condition, or even the condition he is complaining of. Some physicians testified concerning the results of the examination of the urine; the appearance and physiological conditions indicating other diseases; the effect of injury, age, general health, etc., as tending to depreciate his earning capacity, etc.

“It seems that the claimant, a carpenter, in the course of his employment, fell about eight or ten feet upon a hard substance injuring his neck and back and, as he claims, generally affecting his nervous system, strength and health.

“The Board has given careful attention to all the testimony of the physicians, both from their personal examinations and as experts. Such testimony is to this Board deceptive. In this case two doctors, who testified apparently perfectly candidly, stated, from their personal examinations, they were certain that bones of the vertebrae of the neck were broken or dislocated. Other doctors say that there is no such condition. So this Board did not get any substantial help from the testimony of the experts, or the physicians herein; therefore, passes by without further comment, to other facts which apparently seem to control. The claimant was injured, without reference to the medical testimony; he insists he has not been able to work, and has not worked. He received twenty-four (\$24.00) dollars a week as wages. The accident occurred in the course of the employment.

“There is no testimony upon which this Board can base any findings, intelligent or otherwise, what the difference in the wages of the injured employee was before the injury and what he could earn since. From the above facts, the Board is of the opinion that the evidence preponderates in favor of the claimant; that he is yet suffering from the injury; and inasmuch as there are no other facts to determine whether or not this is a temporary or permanent, partial, or total, disability, the Board is of the opinion that the disability in some form continues to exist.”

Danielson v Waful & Deuchler Co., I. B. No. 930,
p. 109.

“We are also constrained to advise you that it is an uncontroverted fact that one of the most serious difficulties to be confronted in the disposition of compensation questions must necessarily be determined upon the testimony of physicians. So long as the respective parties to contests, arising out of an industrial accident, are permitted to bring before the Board physicians who make examinations for the specific purpose of testifying at the instance of such party, will there be difficulty in a satisfactory adjustment thereof. Notwithstanding the fact that physicians and surgeons must acquire a great amount of knowledge and a high degree of skill in their profession, the intricacies of the human system, the ills to which it is susceptible and the effects of an injury that come to one at the various stages in life, make it well nigh impossible for them to testify with any degree of accuracy in the majority of cases. This is especially true where physicians testify solely as experts, and are not personally familiar with the manner of injury and the process of recovery. This makes it especially difficult to reach satisfactory conclusions oftentimes in the most serious kinds of injury. However, not alone are we concerned with difficulties that come from an honest inability to be correctly advised concerning these serious and apparently unsolvable questions, but much might be said concerning a partisanship in the appointment of arbitrators, such as referred to herein, not infrequently being detected in this class of testimony. Because of these things, in the judgment of this Board, if only expert testimony concerning the nature, character and extent of an injury, etc., were admissible, and such experts were selected by the Board from sources publicly known to be disinterested and of better than the average known skill, conditions would be much better.”

(From Annual Report of Board to Governor, 1915.)

(d) Refusal of employee—Persistence in insanitary or injurious practices.

Where one employed as a journeyman carpenter, while in the course of his employment, ran a splinter in the thumb of his hand and attempted to remove the splinter with a pin, and blood poison resulted, from which the employee died, HELD: that the employee was not guilty of injurious practices as tending to impair or retard his recovery when he attempted to remove the splinter from the flesh of his thumb.

Proulx v Hudson & Sons, I. B. No. 255, p. 45.

Where employee refuses to undergo operation, the burden of proof is on employer to show such refusal to have been unreasonable and that the operation would have accomplished satisfactory results.

Marshall v Orient Nav. Co., 1910, 1 K. B. 79.

Hay's Wharf v Brown, 3 B. 84, C. A.

Delay: See

In re McLeurn, Mass. 111 N. E. 783.

Jendrus v Detroit Steel P. Co., Mich., 144 N. W. 563.

Where an employee refused to accept treatment from physician of employer and did not follow directions and advice of the physician to whom he went for treatment, as a result of which his hand became somewhat stiff; HELD, the condition is the result of his failure to accept treatment and not of the injury.

Janczewski v Central Loc. Works, I. B. No. 593, p. 32.

See *City of Milwaukee v Miller*, 144 N. W. 188.

Medical treatment by ignorant and unskilled practitioner does not deprive employee of right to compensation.

Charles v Walker, 25 T. L. R. 609, 2 B. W. C. C. 5.

Recovery may be had for defective treatment.

Ross v Erickson (Wash.), 155 Pac. 153; *Pawiak v Hayes* (Wis.), 156 N. W. 464.

Further sum for medical aid will be allowed, where it is shown that it was necessary to procure the service of a physician other than that furnished.

Cegrelski v Lehon Co., I. B. No. 591, p. 35.

Where an employee was injured and reported to the foreman at 8:00 o'clock the following morning as to the injury, and was advised by the foreman to see a doctor, the employer is liable for medical bills arising out of the accident not to exceed \$200.00.

Eide v Horn, I. B. No. 658, p. 44.

Doctor's bill held excessive.

Sleeth v Horner & Co., I. B. June 10, 1915.

Recovery may be had for defective treatment and malpractice against employer.

Ross v Erickson Construction Co., Wash., 155 Pac. 153.

And physician may be sued:

Pawiak v Hayes, Wis., 156 N. W. 464.

Refusing surgical operation, when not unreasonable, does not affect claim.

Jendrus v Detroit Steel Prod. Co., 178 Mich. 265, 144 N. W. 563, Ann. Cas. 1915, D. 476.

Operation, if attended with risk and success doubtful, may be refused.

Fulton v Owners of Majestic, 100 L. T. N. S. 644. 1909, 2 K. B. 54.

In re McLean; Mass.; 111 N. E. 783.

Hawkes v Coles, 3 B. W. C. C. 163.

It is not sufficient to preclude a physician, who has been appointed by the Board to make an examination and report his findings, from testifying, unless it is clearly shown he is biased and prejudiced.

Krisan v American Steel Foundries Co., I. B. No. 581, p. 156.

“We doubt very much whether the Board has the right in any case to force an operation on a patient where there is any element of danger to life or which would be accompanied by any great amount of pain. To hold that the Board had power to force an operation would be, in our opinion, sufficient to hold the Board morally responsible for the death of an individual, if, unfortunately, the death would come as result of this operation.”

Burdcuski v Peabody Coal Co., I. B. No. 1064, p. 183.

§ 19 ADMINISTRATION.

(a) Arbitrator—Committee of arbitration—Election—Deposit.

(b) Hearing by arbitrator—Notice—Decision—Petition for review—Agreed statement of fact.

Under section 19, paragraph (b) of Act, the statement of fact, verified by the chairman of the arbitration committee, is sufficient to give the Board jurisdiction on review.

Section 16 of Act, and rule 13, adopted by the Board, construed in connection with the proper method of taking the record up for review.

Under rule 15, the specific provision for bringing up the record does not preclude other methods.

To challenge the jurisdiction of Board, it is necessary to file special appearance.

The right to challenge the jurisdiction of Board is waived by appearing generally.

Rossow v Denvir, I. B. No. 861, p. 141.

Board will not disturb findings of arbitration committee on a close question of fact where the committee heard all of the evidence, as it saw the witnesses, heard them testify and had a better opportunity to judge of their character and credibility.

Where it is impossible to determine where the weight of the testimony is or reconcile the various phases of a record upon a question of facts, the Board will generally follow the conclusions and findings of the committee of arbitration.

Lynch v Baers Express Co., I. B. No. 577, p. 79.

After decision is once rendered and filed, Board is not vested with any power to set aside, disturb or change its own findings upon the record.

Mustaccio v Simpson Construction Co., I. B. No. 273, p. 60.

“The mere fact that one makes application to extend the time to file his petition for review does not automatically carry with it an extension of the time within which to file an agreed statement of facts or stenographic report. Inasmuch as the record shows no such extension of time, the Board is powerless to proceed further in the case, and automatically the opinion of the committee of arbitration becomes the opinion of this Board.”

Bryer v Hayes, I. B. July 9, 1915.

Where it is difficult to determine where the weight of testimony lies concerning a given state of facts or condition or manner in which an accident happened under the Workmen's Compensation Act, the legal presumption favors the payment of compensation.

Isidora v Rockford Gas Light & Coke Co., I. B. No. 555, p. 42.

Ex parte affidavits, depositions not in conformity with the statute or rules of court, and transcripts of testimony taken before coroners, are not best evidence, and are not admissible to establish any fact or question at issue.

Testimony of a deceased witness taken in some other and different proceeding than the one in which the same is sought to be introduced is not admissible.

In death cases, where employers make advances that are absolutely needed and necessary to the employee's dependents, and no serious question is raised concerning the correctness of same, the Board will allow credit for same.

Rediger v Pekin Wagon Co., I. B. No. 889, p. 146.

(e) Review by Board—special finding—notice—agreed statement of facts—stenographic report.

Act is complete in itself in providing means for summoning parties interested, independent of Practice Act.

Staley v Illinois Central Ry., 186 Ill. App. 593.

“As we understand the rule, the burden is upon the claimant in the first instance to establish the material facts, that is to make a prima facie case. Then the burden shifts to respondent.”

Rediger Adm. v Pekin Wagon Co., I. B. March 4, 1915.

“The coroner’s verdict is not conclusive evidence of the manner in which deceased met his death. It is merely proper evidence, entitled to weight along with the other facts and circumstances in the case.”

Rediger Admr. v Pekin Wagon Co., March 4, 1915.

“While we are not, we believe, bound to adhere to the technical rules of evidence, we do not feel disposed to go to the extent of admitting this class of testimony unless the truthfulness of same is admitted, bears the highest possible authentication or some physical or other substantial facts connected therewith, the truthfulness of which may be fairly presumed. Applying this rule, the Board is of the opinion that the testimony taken before the coroner’s jury in this case ought not to be admitted.”

Rediger Admr. v Pekin Wagon Co., March 4, 1915.

“The Board, after a thorough consideration of the question of its right to permit to be read in evidence testimony taken under a *dedimus* issued by it, is of the opinion that the position of the respondent is not sound. Inasmuch as all of these objections address themselves to the one question of the Board’s right to issue a *dedimus*, we dispose of the same by a finding on the one question. The argument of counsel, that the power to issue a *dedimus* is inherent in courts, does not agree with the fact that the legislature has already legislated concerning the question. It is barely possible, if there were no provisions of the legislature on the subject, the courts could invoke the common law doctrine of ‘inherent right,’ but because of the fact that the legislature has made provisions for the same precludes the idea of inherent right. In any event, this would cut no figure concerning the right of the Board to issue a *dedimus*. The fact that the legislature may have made provision for the same as applicable to courts does not preclude its power to legislate concerning administrative boards exercising such power.

“This was evidently the intention of the legislature, as expressed in this Act, because it specifically gave the Board the power to make rules and regulations to proceed summarily.

“Again, the rule that is objected to by respondent here merely permits the ‘reading in evidence of testimony taken according to the provisions of the rule,’ leaving the Board to judge as to the regularity of the proceeding in the suing out of the *dedimus*, etc. Hence, did we not have specific power to issue a *dedimus*, yet we would have the right to make a rule permitting the reading of testimony so taken because of the specific power given to make rules.

“It is therefore ordered, adjudged and decreed by the Board that the motion of the respondent concerning the issuing of the *dedimus* herein be overruled, and the *dedimus* issue herein as prayed for under the rule.

“The respondent seriously challenges the constitutionality of the Act and makes the following points:

“That the Act is in derogation of the property right provisions in the Federal Constitution.

“That it is a species of legislation purely beneficial to certain classes of people interested in industrial conditions only.

“That the procedure provisions of the Act, wherein it is provided for filing claim with the Industrial Board, appointment of arbitrators, arbitrating differences between employers and employees, and reviewing of the findings of the committee of arbitration, violate the right of trial by jury provision of the ‘Bill of Rights.’

“That one of the essential provisions of the Act, the one dividing employers of labor into hazardous and non-hazardous classes, etc., is arbitrary and unreasonable and in violation of the Constitution concerning the powers of the legislature.

“This Board has carefully considered the question of its right to sit in judgment upon the acts of its creators, so far as the same may apply to, or in any wise affect, the power that the legislature may have to enact laws concerning compensation and creating this Board. The Board, as created by the Act, is an administrative body, with possible quasi-judicial power, or with power similar to and equivalent to the power exercised in a measure by courts of law. Its primary purpose is purely administrative. It is authorized by the Act to maintain offices, select employees, and to proceed to administer the Act; that is, require the reporting of accidents, the arbitration of matters upon which parties do not agree, the keeping of records and files, the making of rules, the supervision and control of indemnity insurance, and reviewing of matters submitted on arbitration. It is not a court, nor are its opinions given the weight of authority of law. The only presumptions indulged in favor of the holdings of the opinions of this Board are concerning the facts given on particular cases, and in this its findings are not unlike the findings of a jury—merely advisory—and subject to review, should it be in violation of law.”

Cardinale v Valencano, I. B. No. 665, p. 114.

Deposition—authority to issue—not inherent in Superior Court of Massachusetts for use before Industrial Board.

In re Martinelli, 219 Mass. 58, 106 N. E. 557.

Procedure should be with as little formality as is consistent with preservation of the real rights of both parties.

In re Hunnewell, 220 Mass. 351, 107 N. E. 934.

Where cause is called and applicant does not appear, motion to dismiss by respondent will be allowed.

Motely v McDonald, I. B. No. 493, p. 25.

If the stenographic report is filed without first submitting it to the applicant or his attorney for his authentication, or the stenographic report was not authenticated by any one representing either the applicant or his attorney, nor by the chairman of the arbitration committee, the petition for review will be dismissed.

Petrock v Keystone Steel Works, I. B. No. 964, p. 89.

Motion to dismiss for want of a stenographic report will be denied where it is shown that a letter was addressed to secretary of the Board requesting that it be submitted for authentication.

Other methods or means than those specifically indicated in the terms of the statute are permissible to bring the record properly before the Board. (*Rossow v Denvir* (861) followed.)

Hollas v Illinois Steel Co., I. B. No. 827, p. 158.

Failure to object to filing stenographic report or agreed statement of facts after the time provided by statute and going to trial, is a *waiver* of all question concerning the regularity of proceedings before the Board.

Blake v Herskovitz, I. B. No. 1193, p. 161.

Chairman of arbitration committee has power to authenticate statement of facts upon failure of parties to file a correct stenographic report or agreed statement of facts. (*Rossow v Denvir*, No. 861, followed.)

Where parties fail to file a stenographic report or agreed statement of facts within the time prescribed by law, but an authenticated statement is filed in apt time by the chairman of arbitration committee: HELD: that the Board is not estopped from hearing the case on review.

Bernstein v Bothman, I. B. No. 1502, p. 163.

See *Renfroe v Whipple Car Co.*, I. B. No. 491, p. 14.

(f) Decision of Board final—of arbitrator when no review.

“Cause set for trial on September 10th in East St. Louis, Ill. Called for trial. Applicant filed an affidavit in the nature of a motion objecting to the proceeding because he was not financially able to attend the sitting and prepare for trial at the city of East St. Louis, the same being in the neighborhood of one hundred and fifty miles away from his home.

In said affidavit it was also alleged that additional testimony could not be taken upon any points not disputed or at issue before the committee of arbitration, on a hearing before the Board. It was also alleged that so far as the record before the committee of arbitration is concerned the proceeding on review is not a proceeding *de novo*, and that the Board was bound to hear it solely upon the evidence taken before the committee, and additional evidence on points not raised before the committee.

It also appeared that the notice required under the rules of the Board to be given to the opposite party where a party desires to introduce additional testimony had not been received by the claimant, or his attorney.

Taking up these questions in the reverse order the Board finds: First, that the rule in question was intended to prevent surprise to the opposite party; in cases where notice under the rule has not been given to the party entitled to the same, a continuance will be granted to give him time to meet such additional testimony.

The Board does not agree with the contention of the respondent that the proceeding before the Board upon review is not in the nature of a trial *de novo*. It would seem to the Board that the provision of the Act providing for the hearing of additional testimony excluded any possibility of a trial upon the record. The contention that additional evidence is admissible upon review upon issues that are not raised before the committee of arbi-

tration only, we think it not tenable. If this is the correct view of the law, then there would be but little occasion for the use of additional testimony. Hearing upon review before this Board is not only summary and simple, but to be conducted as though the matter had never been tried. Anything that will in any way throw any light upon the issues must be admitted.

Schweer v Owsley, I. B. No. 532, p. 74.

Dismissal by board of arbitration without prejudice saves rights of parties.

Junker v Lorimer & T. Con. Co., I. B. No. 653,
p. 28.

Because of the fact that the chairman of the committee had not signed such statement of facts it is insisted the Board has no jurisdiction. The Board cannot concur with this contention. In the wide powers and discretions given to the Board it surely was intended that it should be the judges of what constituted a stenographic report of a record or an agreed statement of facts; and that no advantage should be taken concerning the filing of the same. The Board is of the opinion that the respondent has substantially complied with the law and the rules of the Board, extending the time in which to file the same.

Behling v Metz Furn. Co., I. B. No. 598, p. 61.

“The decision of the Industrial Board is binding only when it is acting within its powers. It has no jurisdiction to apply the Act to persons or corporations who are not subject to its provisions nor to an accident not within the provisions of the Act.”

Upphoff v Industrial Board, 271 Ill. Sup. 312.

Courter v Simpson Construction Co., 264 Ill.
Sup. 488.

Bragnis v Falk, 147 Wis. 327.

Finding of fact of Industrial Board, where supported by evidence, must stand, unless wrong as matter of law.

In re Burns, 218 Mass. 8, 105 N. E. 601.

In re Buckley, 218 Mass. 354, 105 N. E. 979.

In re Meley, 219 Mass. 136, 106 N. E. 559.

Hills v Blair, Mich., 148 N. W. 243.

Nekoosa Edwards Paper Co. v Indust. Com., Wis., 141 N. W. 1013.

In re Diaz, 217 Mass. 36, 104 N. E. 384.

In re Bentley, 217 Mass. 79, 104 N. E. 432.

Rayner v Sligh Furn. Co., Mich., 146 N. W. 665.

In re Fierro's Case, Mass., 111 N. E. 957.

The decision of the trial court as to the best method of compensation will not be disturbed except where its discretion has been abused.

Gorrell v Battelle, 93 Kan. 370, 144 P. 244.

In re Septinio, 219 Mass. 430, 107 N. E. 63.

See *In re Stickley*, 219 Mass. 513, 107 N. E. 350.

A finding by Industrial Accident Board stands on the same footing as the finding of a judge or jury.

Pigeon v Emp. Liab. Ass. Corp., Mass., 102 N. E. 932.

Cavanagh v Morton Salt Co., Wis., 140 N. W. 53.

Finding of Industrial Board is res adjudicata except as to personal injury.

Spooner v Estate of Beckwith, 149 N. W. 971.

Decision of any two members that of committee or Board.

Two members of the board have a right to hear a case on review as Act gives any member of the Board power to swear witnesses and take testimony.

Moeller v Beredo Mfg. Co., I. B. No. 175, p. 66.

The mere fact that evidence is heard by but two members of the Board is no ground for striking the agreed statement of facts from the files and dismissing the cause, even though a limited appearance is filed for that purpose.

Anderson v National Fireproof Co., I. B. No. 625, p. 41.

Change in membership of arbitration committee does not void proceedings.

Hill v Johnson, I. B. Sept. 10, 1915.

Determination by arbitrators whether employee suffered injury while engaged in the line of his duty, and the measure of liability, is not a judicial proceeding.

Lavin v Wells Bros. Co., 272 Ill. Sup. 611

(1) Review by Circuit Court—Certiorari—Scire facias—Suit in chancery—Decision—Judgment—Review only by Supreme Court.

Review of decisions of Industrial Board, as to whether Board has acted within its powers or illegally, is within inherent power of Circuit Courts.

Courter v Simpson Construction Co., 264 Ill. Sup. 468, opinion ante.

Appeal to Circuit Court.

Dragovich v Iroquois Iron Co., 269 Ill. Sup. 478, opinion ante.

Appeal from County Court lies to Appellate Court.

Lauruszka v Empire Mfg. Co., 271 Ill. Sup. 304.

Proceedings judicial in nature.

Pigeon's case, 216 Mass. 51, 102 N. E. 932, Ann. Cas. 1915, A. 737.

Certiorari from Circuit Court under Act is broader than at common law.

People v McGoorty, 270 Ill. Sup. 610.

Joinder. Where all counts are based on the same state of facts, there is no mis-joinder.

Price v Clover Leaf Mining Co., 18 Ill. App. 27.

Jury trial—failure to pay fee—not ground for objection.

Davis v Denver & Rio Grande Ry., 142 Pac. 705.

Jury trial not waived entirely by election.

Young v Duncan, 218 Mass. 346, 106 N. E. 218.

(g) Judgment in Circuit Court on certified copy—Taxation of costs and attorneys' fees.

(h) Review by Board of agreement or award when disability changed.

Under paragraph h, section 19, Board may re-establish, increase, diminish or end compensation.

Where facts show that applicant has not been guilty of injurious practices or has done nothing to retard his recovery, the Board on review will not interfere with its former finding.

Where it is not known how long a disability will last or continue and recovery is problematical, the Board will not disturb its finding.

Smith v Israel Bros., I. B. No. 1300, p. 164.

The report of the committee of arbitration that "Joe Beam is entitled to receive and recover from said respondent, Thornton Claney Lumber Co., the sum of five and 63-100 (\$5.63) dollars per week for a period of temporary total disability" is sufficient as it cannot be determined when the disability will terminate.

Beam v Thornton Claney Lumber Co., I. B. 1048, p. 43.

Where an award is made to an employee under Act, and death occurs, not the result of injury, the compensation remaining unpaid at the time of the death abates under section 21 of Act.

Ticzkus v Standard Office Co., I. B. 1616, p. 176.

Even had the Board confirmed the decision of the committee of arbitration, either side could have come in within 18 months and have had the award increased, diminished or ended upon making a proper showing to this Board, so that the mere fact that applicant failed to petition for a review within the time specified by law does not preclude him from coming in under the 18 months section.

Krebs v Western Wheeled Scraper Co., I. B. July 10, 1915.

“It is not within the power or province of the employer to arbitrarily suspend payment of compensation for an injury unless in fact the claimant shall have recovered from such injury and such disability resulting therefrom shall have terminated. In the case at bar such disability had not terminated; hence the claimant is entitled to invoke the powers of this Board to review such arrangement.”

Murawski v Schriburger & Co., I. B. July 9, 1915.

Board has no power, after decision once rendered, to set aside, disturb or change its own findings on the record.

Mustaccio v Simpson Construction Co., I. B. No. 273, p. 60.

APPEAL—

Appeal lies under Appellate Court and Practice Acts.

Lavin v Wells Bros Co., 272 Ill. Sup. 609.

Appeal lies from County Court to Appellate Court.

Lauruszka v Empire Mfg. Co., 271 Ill. Sup. 304.

See:

Richardson v Sears Roebuck & Co., 271 Ill. Sup. 325.

§ 21 LIEN.

No award to be subject to lien.

§ 22 AGREEMENT.

Within seven days after injury, presumed fraudulent.

§ 23 WAIVER.

Subject to approval by Board.

No settlement wherein any amount of compensation is waived is final without the approval of the Board.

Section 18 of Act, which provides: "all questions arising under the Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Industrial Board," is qualified by section 23 of Act.

McClennan v Allith Prouty Co., I. B. No. 436,
p. 116.

If an employe who sustained an injury, while working under Act, has not been paid all the compensation he is entitled to, any settlement made by him or release executed without the approval of the Board is not binding.

Under section 23 of Act, an employee cannot waive any compensation he may be entitled to without the approval of the Board.

Cass v Great Lakes D. & D. Co., I. B. No. 779, p.
99.

WAIVER

If an employee who sustained an injury and is entitled to compensation under Act has not been paid all the compensation to which he is entitled to, any release executed by him without the approval of Board is not binding. Such release acts only as a receipt and the amount paid should be deducted from the total amount payable.

Act is a contract between the employer and all his employees and the state, represented by the Industrial Board, in which they agree to accept all the terms and provisions of Act where the employer and the employees elect to be bound thereby.

Fitt v Central Ill. Publ. Service Co., I. B. No. 764, p. 129.

A contract signed by an employee before going to work, absolving the employer from all obligations resulting from any accident he might subsequently meet, is not binding, as the contract entered into between the employer, employee and the State of Illinois when they accepted the provisions of Act is controlling, and all previous contracts entered into are merged.

Chicago Savings Bank v Chicago Rys. Co., I. B. No. 235, p. 104.

Agreement to settle on partial disability basis no bar to claim for total disability.

Duprey v Maryland Casualty Co., 219 Mass. 189, 106 N. E. 686.

“The purported release filed herein, showing payment in full satisfaction, etc., is not a bar as against this claimant in this proceeding as the same amounts to a waiver of some of the provisions of the Compensation Act with reference to amounts.”

Auksutes v Newman, I. B. Nov. 1, 1915.

§ 24 NOTICE.

Of accident—in 30 days.

Conversation over telephone is competent to prove notice.

The mere fact of notice over telephone is sufficient to charge employer with knowledge of injury to employee.

Cutavia v Swieberg, I. B. No. 1855, p. 153.

Notice over the telephone to the superintendent by the employee, followed by notice over the telephone by the sister-in-law of the employee to the foreman, is notice to the employer.

Upon being notified of an accident and having knowledge of its occurrence, it becomes the first duty of the employer to furnish the necessary medical aid. It is not the duty of the employee to demand it.

Olson v Hillman's, I. B. No. 713, p. 124.

Onus to show that employer has not been prejudiced by failure to give notice lies on workman.

Shearer v Miller, 2 Sc. Sess. Cas. 5th. Ser. 114.

Failure to give notice held not bar to claim. (Kans.)

Ackerson v National Zinc Co., 153 P. 530.

Notice to foreman, when sufficient.

In re Bloom, Mass., 111 N. E. 783-45-783.

§ 29 THIRD PARTY.

Liability of other persons—surrogation.

Bryant v Fissell, N. J., 86 Atl. 458.

Meese v Northern Pac. Ry., 206 Fed. 222, 211 Fed. 254.

Peet v Mills, 71 Wash. 437, 136 Pac. 685, Ann. Cas. 1915, D. 154.

Insurance.

United States Fid. & G. Co. v New York Rys. Co., 156 N. Y. S. 615.

Act does not repeal statute giving right of action for wrongful death against third parties. (Wash.)

Meese v Northern Pac. Ry., 211 Fed. 254.

§ 31 SUB-CONTRACT.

Insurance—Fraud.

Section 31 of the Act of 1913 provided that “any person, firm or corporation who undertakes to do, or contracts with another to do, or have done for him, them or it, any work enumerated as extra-hazardous in paragraph (B), section 3, requiring employment of employees in or about the premises where he, they or it, as principal or principals, contract to do such work, or any part thereof, and does not require of the person, firm or corporation undertaking to do such work for said principal or principals that such person, firm or corporation undertaking to do such work shall insure his, their or its liability to pay compensation provided in the Act to his, their or its employees, such person, firm or corporation shall be included in the terms ‘employer’ and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of this Act.”

It is the opinion of this Board that this section of the Act in no wise applies to the owner of property who enters into a contract with a builder to erect a building upon his premises; and that the owner of the property does in no sense “contract to do such work” as the terms are used in said section, but contracts with “some other person” who is principal or principals to do the same and therefore is in no sense “any person, firm or corporation” undertaking to do any work enumerated as “extra hazardous;” but that the term “principal” or “principals” as used in the section applies to the building contractor who contracts in the first instance to do the work; and if he fails to require “others who do or have done for him work as extra hazardous to insure his liability to pay compensation,” then he, as the original contractor or principal is liable to the employees of such other person, or sub-contractor.

The Board further finds the claimant herein is not entitled to invoke the terms and provisions of the Act as against the respondent here; and that therefore no compensation is due because of his injury so sustained and shown by the evidence.

Lullefair v Crawley, I. B. No. 488, p. 26.

“We understand the rule applicable in this case to be as follows:

A person, by contract or operation of law, for a limited time, by virtue thereof subject to the control of another in a particular trade, business, occupation or line of employment, is in law the employee of such other person, even though he may draw his wages from an employment made primarily with some other person and for the purpose of some other trade or business. It seems that the consensus of opinion of the courts is that the rule determining who is the employer of a given individual turns upon who has the power to direct, supervise and control the employment and the power to discharge. In this case, it seems that the deceased Junker was employed by the farmer Touchette to drive his team while doing work for the Lorimer & Gallagher Construction Company, and was subject to its orders, direction and commands, notwithstanding that in the driving and caring of the teams he was probably subject to the orders and directions of Touchette.

The facts in the case, reported in the 242d Illinois, page 244, are not similar to the facts in the case now at bar. In the case reported in the 242d Illinois the driver was in the employ of a man engaged in general teaming. The court in commenting upon the facts said: “In such cases the party who employs such contractors indicates the work to be done, and in that sense controls the servant as he would control the contractor if he were present. But the person who receives such orders is not subject to the general orders of the party who gives them. He does his own business in his own way, and the orders which he receives simply point out to him the work which he or his master has undertaken to do. There is not that degree of intimacy and generality in the subjection of one to the other which is necessary to identify it to and make the employer under the fiction that the act of the employer is the act of the employed and his act, etc.”

“All the orders the employee of the general teamster got from the electric company were merely with reference to what was to be hauled and where it was to be hauled. In the case at bar they admit that in the matter of his general duty the deceased, Junker, was subject to the orders and directions of the Lorimer & Gallagher Construction Company; they could take him from one job to another; they would order him to go to town for provisions; they could suspend his work entirely; they could require him to haul poles, or work anywhere. He was subject to the orders of Touchette only to the extent that he should probably feed, drive and take care of the team. The mere fact that he drove Touchette's team, fed it and cared for it, and got his wages from Touchette, is not sufficient, in the light of the authorities, to justify a holding that, at the time he was doing this work subject to all these orders and directions from the Lorimer & Gallagher Construction Company, he was not in their employ.”

Junker v Lorimer & Gallagher Construction Co.,
I. B. No. 653, p. 28.

Independent contractor.

In re Sundine, 218 Mass. 1, 105 N. E. 433.

In re King, 220 Mass. 290, 107 N. E. 959.

See “Employee” (ante).

INDUSTRIAL BOARD OF ILLINOIS RULES.

1. Accident Reports; Filing
2. Docketing Cases
3. Application for Adjustment of Claims; Arbitration
4. Application for Adjustment of Claims; Requisites; Blanks
5. Offices of Board in Aid of Settlement
6. Hearing; Date and Place; Notice
7. Hearings Before Arbitrator or Committee
8. Hearings Before Arbitrator or Committee; Practice
9. Arbitrators; Disqualification
10. Agreements for Compensation and Settlements
11. Lump Sum Settlements
12. Contested Lump Sum Settlements; Practice
13. Lump Sum Settlements; Paying; Receipt
14. Automatic Dismissal of Lump Sum Petitions
15. Setting Cases; Practice
16. Review; Disposition Without Hearing
17. Reviews; Hearings; Continuances
18. Depositions; Applications
19. Summons and Subpoena
20. Assignment of Causes; Hearings; Findings
21. Reviews; Consideration in Conference
22. Rules Governing Hearings on Review
23. Records; Keeping
24. Assuring Payment of Compensation; Financial statement;
Indemnity bond; Insurance Affidavit
25. Financial Statement; Approval; Notice
26. Evidence of Financial Ability Required
27. Non-Approval of Security; Option
28. Expiration of Insurance; Notice
29. Receipts; Filing
30. Arbitrator's Oath; Form
31. Transcript Record
32. Authentication of Records on Appeal

RULE 1. ACCIDENT REPORTS; FILING.) All accidents which result in disability continuing for more than six (6) working days, and all accidents causing disfigurement or death, and all other facts as the same are required in section 30 of the Workmen's Compensation Act, shall be reported to the Board at its office, 303 City Hall Square Building, Chicago, Ill. Employers shall also furnish Board with monthly statement, showing amount paid for hospital and medical services rendered in cases in which the accidental injuries did not cause disability to continue for more than six working days.

RULE 2. DOCKETING CASES.) All petitions for adjustment of claims for compensation, in which the parties desire to introduce additional testimony or to be heard by the Board, shall be docketed by the secretary or minute clerk in the order in which the same are filed, in a regular docket kept for such purpose.

RULE 3. APPLICATION FOR ADJUSTMENT OF CLAIM; ARBITRATION.) Any employer, employee or his personal representative, working under the Compensation Act, at any time after the occurrence of any injury, fatal or otherwise, when it shall be determined that the parties cannot agree concerning any disputed question of law or fact, should notify the Industrial Board of such failure to agree, and should file therewith his application for adjustment of claim. If the com-

pensation claimed is for partial permanent or total permanent incapacity, or death, then arbitrators may be appointed and the cause proceed to arbitration in the manner provided in section 19 of the Workmen's Compensation Act.

RULE 4. APPLICATION FOR ADJUSTMENT OF CLAIM; REQUISITES; BLANKS.) At the time the party or parties shall notify the Board of their failure to agree, and of their claim for compensation, the application should set forth with reasonable details and certainty, the general nature of the controversy out of which such claim grows, the character of the injury sustained, and any and all other facts necessary and proper to be alleged in connection with such dispute.

RULE 5. OFFICES OF BOARD IN AID OF SETTLEMENT.) Immediately after the filing of a petition for adjustment of claim, the Industrial Board will forward or deliver to the applicant and respondent, a notice to file with the Board, within ten (10) days of the receipt thereof, his, its or their detailed account of the occurrence of the accident, when and where the same occurred, and the nature, character and extent of the injury. Upon the filing of such detailed accounts, or the failure to do the same, within said time, the files, together with such detailed accounts, shall be referred to the chief industrial examiner of this Board, who shall immediately, or as soon as the same may conveniently be done, call the parties or their attorneys together, and tender to the parties the offices of the Industrial Board in an effort to amicably adjust all questions arising out of the accident and alleged in the petition for adjustment of claim. After the calling of such parties together, in the event of an amicable adjustment, and upon waiver of arbitration under the terms of the Act, a formal order of approval shall be entered, approving such amicable adjustment and settlement, in the event the Board shall deem it for the best interests of the parties. In the event the cause cannot be amicably settled and adjusted, the detailed reports of the several parties filed in conformity with the notice above referred to, and all proceedings concerning the same, may be cancelled and withdrawn by the respective parties, and shall in no wise interfere with or abridge the rights of or bind either or any of the parties thereto; and the cause shall be placed upon the arbitration docket and be settled by arbitration in the regular way and in accordance with the terms of the Workmen's Compensation Act of Illinois, without prejudice to the rights of such parties.

RULE 6. HEARING; DATE AND PLACE; NOTICE.) After the appointment of an arbitrator or committee of arbitration, the Industrial Board will fix a date and place of hearing and notify the parties thereof, at which time the parties should appear and present their respective cases and the evidence and facts in connection therewith.

RULE 7. HEARING; BEFORE ARBITRATOR OR COMMITTEE; POSTPONEMENT.) Postponements of hearings before arbitrators or committees of arbitration, as the case may be, are to be granted only when it shall appear that without the fault of the party asking for same, material and irreparable injury may occur. Parties are therefore required to make every preparation possible and to appear at the time and place and proceed with the cause. In the event that either of the parties fails to appear at the time and place set, the cause will proceed to final determination, except as provided in the foregoing part of this rule.

RULE 8. HEARING BEFORE ARBITRATOR OR COMMITTEE; PRACTICE.) Hearings before an arbitrator or committee of arbitration shall be summary, simple and informal. Proof only will be necessary upon the particular disputed questions of fact or law set forth in the application for adjustment of claims: *Provided, however, the arbitra-*

tor or committee may, if necessary, in order to properly adjust such claim, hear evidence on other questions.

RULE 9. ARBITRATORS; DISQUALIFICATION.) No person financially or otherwise interested in the outcome of any arbitration or any question connected therewith, or any member or employee of the Industrial Board, will be permitted to act as an arbitrator on such case for either of the parties.

RULE 10. AGREEMENT FOR COMPENSATION AND SETTLEMENT.) All agreements made between employer and employee or between persons furnishing indemnity or insurance, and employees concerning the payment and the fixing of compensation to be allowed, are subject to the approval of the Industrial Board: *Provided, however,* that all such agreements and settlements between any party to the record that provide for the payment in full in regular weekly payments of the amounts fixed under the schedules in the Compensation Act, will be approved as a matter of course. All contracts, settlements or adjustments made that are procured by fraud, improper influence or misrepresentation, upon petition to the Board, will be set aside.

RULE 11. LUMP SUM SETTLEMENT.) Petitions for lump sum settlements may be filed at any time. Such petitions must be signed by both parties, except those arising under section 7, or paragraph (e) of section 8, of the Workmen's Compensation Act. Petitions for lump sum settlements for injuries arising under section 7, or paragraph (e) of section 8, may be filed by either of the parties. Such petitions shall set forth the death of the employee, if such be the fact, or, if the accident did not produce death, the nature and extent of the injury; together with the weekly, monthly or annual wages of the employee; the total amount of compensation due and the present value of the sum remaining, figured with annual rests, as provided by law. All petitions for lump sum settlements will be approved by the Board only upon investigation and showing that it is for the best interests of the parties. Such petitions for lump sum settlements shall show the names and addresses of both employer and employee and guarantor and surety.

RULE 12. CONTESTED LUMP SUM SETTLEMENT; PRACTICE.) Contested questions arising on petitions for lump sum settlements may be taken up before the Board on Thursdays of each and every week, and will have precedence over all other matters at such times.

RULE 13. LUMP SUM SETTLEMENT; PAYMENT; RECEIPT.) After the approval of all lump sum settlements, the employer shall procure a receipt showing payment in full of such lump sum so fixed as provided therein, regularly signed by the injured employee, or his personal representative, in case of death, and file the same with the Industrial Board at its office in the City Hall Square Building, Chicago, Illinois.

RULE 14. AUTOMATIC DISMISSAL OF LUMP SUM PETITION.) All petitions for lump sum settlements which have been presented to the Board, and remain on file in the department for a period of ninety (90) days, without leave to withdraw or further action taken in connection with the same, will be automatically, and without specific or special order of the Board, stricken from the docket, without prejudice to the parties, and ordered regularly indexed and filed.

RULE 15. SETTING CASE; PRACTICE.) At any time when there shall be ten (10) or more cases pending on review, wherein the parties desire to introduce additional testimony and to be heard by the Board, the secretary or minute clerk of the Board, after consulting with the Board, will set same for hearing at the rate of from six to twelve cases per day, giving preference to causes in the order in which the same shall be filed.

RULE 16. REVIEW; DISPOSITION WITHOUT HEARING.) At any time after the filing of a petition for review in a given case, and not before the records, files and proceedings before the arbitrator or committee of arbitration shall have been regularly filed in accordance with the terms and provisions of the Act with reference to reviews, agreed statements of facts, stenographic reports, etc., the Industrial Board will take and assign for immediate consideration by the Board, not to exceed twenty (20) cases at a given date. Immediately upon the taking of such cases by the Board for disposition, the secretary will notify the parties to the record, or their attorneys, that the said causes are taken for consideration, and that unless within twenty (20) days of the receipt of such notice the parties, or either of them, shall notify the Board in writing that he, it or they desire to introduce additional testimony and to be heard by the Board upon the issues involved in the petition for review, the case will be closed, and such causes, and each of them, will be disposed of in conference by the Board upon such records, stenographic report or agreed statement of facts, as the case may be, files and proceedings, etc., as were had before the arbitrator or committee of arbitration in the said cause, and the decision handed down in accordance with the facts then appearing upon the record there made; provided, however, that the parties may file with the Board their briefs, and together with the same a type-written argument of not to exceed five pages, presenting their theories of the facts and the law.

RULE 17. REVIEW; HEARING; CONTINUANCE.) Upon the call of cases set for hearing on review, wherein the parties desire to introduce additional testimony and to be heard by the Board, the parties should appear and proceed with the cause. Continuances will not be allowed nor delays tolerated, except when it shall appear that without fault of either of the parties material and permanent injury may result from a failure to continue the cause. Parties making such applications will be required to comply, in substance, with the law with reference to motions and affidavits for continuances in courts of record. After the same shall have been submitted, the Board will either grant or disallow the same, according to the justice of the cause.

RULE 18. DEPOSITION; APPLICATION.) Parties desiring to take the testimony of witnesses who live beyond the jurisdiction of the State, or who for any lawful reason are unable to attend hearing before arbitrator or committee of arbitration or upon review, may read in evidence at the hearing before such arbitrator, committee or the Board, depositions that are taken by agreement of the parties; or may read in evidence depositions that are taken before some person authorized to take depositions; *provided*, that they apply to the secretary of the Industrial Board of Illinois to issue a *dedimus potestatem* or commission under the seal of the Board, directed to any competent person to take the testimony of such witness or witnesses, and *provided*, that in all particulars the persons applying for such *dedimus* or commission comply substantially with the terms, provisions and requirements of chapter 51 of the Revised Statutes of the State of Illinois for the year 1913.

RULE 19. SUMMONS; SUBPOENA.) At any time when any cause concerning compensation is pending before any arbitrator, committee of arbitration or before the Industrial Board, the parties in interest are entitled to invoke all the writs, summons or subpoenas provided for under the Compensation Act, and the same will be issued upon the application of such parties accordingly.

RULE 20. ASSIGNMENT OF CAUSE; HEARING; FINDING.) At the time causes upon review not submitted to the Board upon the record made at the hearing before an arbitrator or committee of arbitration,

wherein the parties, or either of them, desire to submit additional testimony and to be heard before the Board, are set for hearing, or as soon thereafter as may be, the Board will determine the time and place of hearing. The reviews will then be assigned to the respective members of the commission, dividing the work as equally as may be. Such additional testimony, etc., upon petition for review, may be heard before any one or more members of the Board. After the taking of testimony, the Board will meet in conference and make findings and orders therein as the facts justify and the law requires.

RULE 21. REVIEW; CONSIDERATION IN CONFERENCE.) All orders, judgments and decrees of the Board are to be filed and entered only after consideration in conference. The findings, judgments and decrees of any two members of the Board will constitute the opinion of the Board.

RULE 22. HEARING ON REVIEW.) (a) After causes wherein the parties have given notice of a desire to introduce additional testimony and to be heard before the Board, have been set, the secretary or minute clerk will make a daily docket showing the number, title and hour of setting for each day's sitting.

(b) Any member of the Board may swear the witnesses and take the testimony in any cause pending before the Board.

(c) In all cases, where the parties have given the Board notice of a desire to introduce additional testimony and to be heard before the Board upon review, parties petitioning for such review and desiring to submit additional testimony are required to give to the opposite party five (5) days' notice of the substance thereof. In the event of failure to give such notice concerning the substance of such additional testimony, the other party shall be entitled to a continuance of a reasonable time in which to meet the same.

(d) The claimant in the original proceedings before the arbitrator or committee of arbitration shall have the affirmative and the right to open and close the argument.

(e) At the conclusion of the testimony in a given case, the member or members of the Board hearing such cause will fix the time in which each party may present his, her or its argument. At the conclusion of the argument, the case will be taken for conference.

(f) Proceedings before the Board shall be simple and summary, though not inconsistent with the established law of the land.

(g) Any attorney, or other party to the record, violating any of the rules of the Board, or guilty of any ungentlemanly or unprofessional conduct, by rule regularly passed by the Board in session, may be subjected to discipline or disbarment from practicing before the Industrial Board, or before any arbitrator or committee of arbitration appointed thereby.

RULE 23. RECORDS.) All awards of arbitrators or committees of arbitration, and all orders, findings and decrees of the Industrial Board concerning the fixing of compensation or the allowance of lump sum settlements, shall be made a matter of record in a book of records kept for such purposes.

RULE 24. ASSURING PAYMENT OF COMPENSATION.) Each and every person, partnership or corporation employing labor in the State of Illinois, working under the Compensation Act, is required to comply with one of the following provisions:

(a) *Financial statement.*—File with the Industrial Board a sworn statement of some officer thereof, if a corporation, or him, if it be an individual, showing its or his financial ability to pay compensation provided for in the Act normally required to be paid; or

(b) *Indemnity bond.*—Furnish security, indemnity or bond, guaranteeing payment of compensation provided for in said Act, normally required to be paid; such security, indemnity or bond shall be taken in some company or corporation licensed to do such business under the laws of the State of Illinois; and shall furnish therewith satisfactory proof of the solvency of such surety, indemnity or bond; or

(c) *Insurance—affidavit.*—Take out insurance, insuring in full his or its normal liability to pay compensation in some company, corporation or association authorized, licensed or permitted to do such insurance business in the State of Illinois, and at the time such insurance is so taken the insurance company, corporation or association so furnishing the same shall furnish to the Industrial Board an affidavit of some officer thereof, if it be a corporation, or of him, if an individual, showing what such normal liability of such person so insured has been for two years prior to the date of such insurance.

RULE 25. FINANCIAL STATEMENT; APPROVAL; NOTICE.) The sworn statement, security, indemnity or bond, or insurance furnished as provided in Rule 24, will be subject to the approval of the Industrial Board, and when the same shall be approved, written notice of approval will be sent to the employer so furnishing the same.

RULE 26. EVIDENCE OF FINANCIAL ABILITY REQUIRED.) Employers of labor electing to make some other provision than the above for securing of compensation shall, within twenty (20) days of receipt of written demand from the Industrial Board, furnish to the Industrial Board evidence of his or its compliance with one of the above alternatives.

RULE 27. NON-APPROVAL OF SECURITY; OPTION.) If the employer does not comply with one of the provisions of paragraph (a), section 26, of the Compensation Act, as provided in Rule 24 of this Board, within ten (10) days' written demand by the Board, or after ten (10) days' written notice of the non-approval of the security, indemnity, bond or insurance furnished, he or it will be liable for either compensation or damages at the option of the employee; such option to be exercised within thirty (30) days after the accident occurred.

RULE 28. EXPIRATION OF INSURANCE; NOTICE.) At any time any policy insuring an employer of labor against loss by reason of injury is terminated, the insurance company shall notify the Industrial Board ten (10) days before such termination. On receipt of such notice of termination or cancellation, the Board will notify such employer so taking such insurance to within ten (10) days take out other indemnities or insurance, or in some way comply with section 26 of the Compensation Act, and upon failure to comply will be subject to either compensation or damages at the option of the employee, provided such option be exercised within thirty (30) days of the accident.

RULE 29. RECEIPT; FILING.) Employers paying compensation under provisions of the Act, whether in conformity with the terms and agreements of any settlement or adjustment between the parties, or upon the findings and approval of the Industrial Board, *shall file at the end of every month with the Industrial Board*, receipts showing the sum total of all payments made during the month.

RULE 30. ARBITRATOR'S OATH; FORM.) Each arbitrator appointed by either of the respective parties or by this Board, to sit in any given case for the purpose of arbitrating any question of law or fact between the parties, shall be required to take the following oath or affirmation, before entering upon the hearing of any cause:

"I,, do solemnly swear (or affirm) that I will honestly and fairly perform the duties imposed upon me as arbitrator in the cause wherein is petitioner and is respondent, to the best of my ability and in accordance with the terms and provisions of the State Compensation Act—so help me God."

RULE 31. TRANSCRIPT OF RECORD; AUTHENTICATION.) Persons desiring to have a decision of the Industrial Board reviewed by the Circuit Court, on filing with the secretary of the Board written motion therefor, will be given fifteen (15) days in addition to the twenty (20) days fixed in and by law in which to file with the Board either an agreed statement of facts or a correct stenographic report of the additional proceedings appearing before the Board. Such agreed statement of facts or stenographic report to be authenticated by the parties or their attorneys, and in the event they cannot agree, by the Chairman of the Board.

RULE 32. AUTHENTICATION OF RECORD ON APPEAL.) Upon the service of a writ of *certiorari* from any of the Circuit Courts of this State, commanding this Board to certify its record or records or to the proceedings had in any given case, to such court for further proceedings therein as may be required by law, it shall be the duty of the secretary of this Board, in compliance with such writ, to certify to the records, etc., ordered therein, in the name of the Industrial Board of Illinois.

INDUSTRIAL BOARD OF ILLINOIS FORMS.

- NO. 1. Notice of election by employer to provide and pay compensation according to provisions of Workmen's Compensation Act
- NO. 7. Notice of election by employer not to provide, etc. ..
- NO. 2. Notice of withdrawal of election by employer to provide, etc.
- NO. 5. Notice of withdrawal of election by employer not to provide, etc.
- NO. 4. Notice of withdrawal of election by employee to be subject to Act
- NO. 6. Notice of withdrawal of election by employee not to be subject to Act
- NO. 46. Report of accidental injury resulting in permanent disability
- NO. 40. Notice of accidental injury and claim for compensation by employee
- NO. 41. Notice of accidental injury resulting in partial permanent disability and of claim by employee after return to work
- NO. 10. Application for adjustment of claim
- NO. 77. Notice by Board of filing claim
- NO. 11. Request for appointment of member on Committee of Arbitration
- NO. Notice of election to have determination by Committee of Arbitration and appointment of member
- NO. 12. Notice of appointment of member of Committee of Arbitration
- NO. 13. Notice of appointment of member of Committee of Arbitration by Board to fill vacancy
- NO. 15. Subpoena
- NO. 16. Notice to produce books, papers and records
- NO. 8. Request for physical examination by employer
- NO. 17. Appointment of physician by Board for examination of claimant
- NO. 71. Tender of services by Board for amicable adjustment of disputed claim
- NO. 26. Stipulation, waiver of arbitration and submission of questions in dispute for decision of Board
- NO. 21. Agreed statement of facts
- NO. Stipulation waiving stenographic report
- NO. 74. Report of accident by employer for amicable adjustment
- NO. 73. Report of accident by employee for amicable adjustment

- NO. 75. Report by surgeon for amicable adjustment
- NO. 72. Notice of hearing by Board for amicable adjustment
- NO. 9. Notice to Board by employer or employee of failure to reach agreement and request for arbitration
- NO. 39. Notice by employee of exercise of option to proceed for recovery of damages or award of compensation under Act (§ 26)
- NO. 14. Notice by Board of hearing
- NO. 18A. Decision of arbitrator
- NO. 018. Decision and award by Committee of Arbitration .
- NO. 65. Notice of decision of arbitrator
- NO. 24. Petition for review by Board of agreement or award
- NO. 33. Memorandum of name and address for service of notices
- NO. 25. Notice by Board of hearing for review
- NO. 66. Notice by Board to introduce any additional testimony
- NO. 22. Decision of Board on review
- NO. 34. Judgment stay bond upon petition for review
- NO. 28. Petition for award of lump sum
- NO. Assent by employer to order for lump sum
- NO. 27. Notice by Board of petition for lump sum
- NO. 29. Answer to petition for award of lump sum
- NO. 30. Order awarding lump sum
- NO. 31. Notice of award of lump sum
- NO. 32. Notice of rejection of award of lump sum
- NO. 43. Receipt on account for compensation
- NO. 42. Receipt for compensation in settlement
- NO. 20. Request by Board for report and receipts
- NO. 36. Demand by Board for security for payment of compensation
- NO. 37. Notice of approval by Board of security
- NO. 38. Notice of non-approval by Board of Security
- NO. 53. Request by Board for financial report of employer ...

Notice of Election by Employer to Provide and Pay Compensation According to Provisions of Workmen's Compensation Act.

Form 1.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that the undersigned employer of labor in Illinois ACCEPTS THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT OF ILLINOIS, approved June 28, 1913, and amended June 28, 1915, and elects to provide and pay compensation for accidental injuries to employees, in accordance therewith.

Number of employees.....

Location of place of employment

(If more than one plant, place of business or work place, state each fully)

.....

Nature of employment

(If more than one kind, state each fully, with location)

.....

Method of providing for compensation adopted by the undersigned ..

.....

(State whether mutual insurance [give name], insurance company

[give name], or carrying own risk)

Dated at this day of 19...

Signed

.....

By

Address:

Notice of Election by Employer not to Provide and Pay Compensation According to Provisions of Workmen's Compensation Act.

Form 7.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that the undersigned employer of labor in Illinois hereby elects NOT to provide and pay compensation according to the provisions of the Workmen's Compensation Act of the State of Illinois, approved June 28, 1913, and amended June 28, 1915.

Dated at this day of 19...

Signed

By

Engaged in the business of:

.....

(State in detail)

Address:

Notice of Withdrawal of Election by Employer to Provide and Pay Compensation According to Provisions of Workmen's Compensation Act.

Form 2.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that the undersigned employer of labor in the State of Illinois hereby WITHDRAWS election to be subject to the provisions of the Workmen's Compensation Act of the State of Illinois, approved June 28, 1913, and amended June 28, 1915.

Dated at this day of 19...

Signed

Address:

Notice of Withdrawal of Election by Employer not to Provide and Pay Compensation According to Provisions of Workmen's Compensation Act.

Form 5.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that the undersigned employer of labor in Illinois hereby WITHDRAWS election to reject the Workmen's Compensation Acts of the State of Illinois of 1913 and 1915, heretofore filed with the Industrial Board, on or about the day of 19..., and hereby accepts the provisions of said Act.

Number of Employees

Location of place of employment

(If more than one plant, place of business or work place, state each fully)

Nature of employment

(If more than one kind, state each fully, with location)

Method of providing for compensation

(State whether mutual insurance, insurance company, or carry own risk)

Dated at this day of 19...

By

Address:

Notice of Withdrawal of Election by Employee to be Subject to Workmen's Compensation Act.

Form 4.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that the undersigned employee, in the service of an employer of labor at in the State of Illinois, hereby WITHDRAWS election to be subject to the provisions of the Workmen's Compensation Act of the State of Illinois, approved June 28, 1913, and amended June 28, 1915.

Dated at this day of 19...

Signed
.....

Address:
.....

Notice of Withdrawal of Election by Employee not to be Subject to Workmen's Compensation Act.

Form 6.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that the undersigned employee, in the service of an employer of labor at, Illinois, hereby WITHDRAWS election to reject the Workmen's Compensation Act of the State of Illinois and the Act of Amendment thereof of 1915, heretofore filed with the Industrial Board, on or about the day of, 19.., and hereby accepts the provisions of said Act.

Dated at this day of 19...

.....

Address:
.....

Report of Accidental Injury Resulting in Permanent Disability.

Form 46.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

The undersigned hereby reports accidental injury, in which permanent disability has resulted to an employee, as follows:

Employer's name Business

Main Office: City or Town

City or town in which accident happened

Employee's name Address:

City or Town.....

Sex .. Age .. Married or Single .. American or foreign born.....

Occupation when injured Wages

Date of accident o'clock M.

Direct cause of injury

.....

.....

.....

Nature of accident (describe fully)

.....

.....

If non-fatal, the length of disability

Permanent disability of employee resulted or will result on 19...

Attending physician or surgeon.....

Hospital

Amount paid By whom

Has compensation been paid? To whom

Amount

Date of report Prepared by

Notice of Accidental Injury and Claim for Compensation by Employee.

Form 40.

To

(Name of employer)

.....

(Address)

You will take notice that the undersigned on the day of
....., A. D. 19.., suffered accidental injuries arising out of and
in the course of his employment, while employed by you at
Illinois.

Name of employee

Post Office Address

Claim for compensation is for

Cause of the accident

.....

.....

Nature of the injury is as follows

.....

.....

Notice of Accidental Injury Resulting in Partial Permanent Disability and of Claim by Employee After Return to Work.

Form 41.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that the undersigned, an employee, in the service of an employer engaged in this business of at, Illinois, suffered accidental injuries arising out of and in the course of such employment, on the day of 19.., at the of said employer, at, Illinois; that the cause of said accident was and the nature of the injuries is on account of which the undersigned employee is partially and permanently incapacitated from pursuing his usual and customary line of employment; that on the day of, 19.., the undersigned employee returned to the employment of said employer, in whose service he was injured as aforesaid.

Further take notice, that the undersigned employee hereby makes formal claim for compensation against said employer for \$..... being weeks days, at \$..... per week or day, on account of said accidental injuries of 19.., and request is hereby made that a copy of this notice be sent by registered mail to said employer at as provided by the Workmen's Compensation Act of the State of Illinois.

Dated 19...

.....
(Employee)

Address:

Application for Adjustment of Claim.

(This form to be filed in duplicate)

Form 10.

.....
.....
*Applicant..,**vs.*
.....
.....*Respondent...*

The petition of the above named applicant.. respectfully shows to your Honorable Board as follows, to wit:

I.

That on the day of 19..

(Name of person injured.)

suffered accidental injuries arising out of and in the course of h...
employment by the above named

(Name of employer.)

That your petitioner is the

(If applicant is a dependent state relationship.)

person injured.

II.

That a question has arisen with respect to the compensation to be paid therefor, and the general nature of the claim in controversy is as follows, to-wit:

(Give the date that employer refused to pay the compensation demanded, and state briefly the exact matter in dispute, as for example:

(A) Employer denies liability for compensation, or,

(B) A dispute has arisen concerning the amount or duration of the compensation payable.)
.....
.....**III.**

That the following is a statement of particulars relative to this application:

1. Name of injured employee
Address
Occupation
2. Name of employer
Address
Place of establishment
Business address
3. Names and addresses of all other parties to this application, and reason such parties are joined
.....
4. Place of accident
5. Nature of work on which injured person was engaged at time of

- accident
6. Description of accident and cause of injury
7. State whether or not medical and surgical treatment required, and whether furnished by employer or not
8. Name and address of Attending Physician
9. Nature of injury
10. Has injured person fully recovered? If so, when
11. Particulars of disability, whether total or partial, and estimated duration thereof. If death resulted, so state, giving date of death.
12. Average earnings of employee prior to accident, excluding over-time:
 \$..... per week.
 \$..... per month.
 \$..... per year.
13. Amount injured person is earning, or is able to earn in some suitable employment or business after the accident:
 \$..... per week.
 \$..... per month.
14. Payment, allowance or benefit received from employer during period of disability:
 \$..... for medical care and attendance.
 \$..... per week for weeks of total disability.
 \$..... per week for weeks of partial disability.
15. Additional amount claimed as compensation:
 \$..... for medical care and attendance.
 \$..... per week for weeks of total disability.
 \$..... per week for weeks of partial disability.
16. Date of service on the employer on notice of accident
17. If notice not served within thirty days, reason for omission
18. If application is to adjust claim for death, state name, address and relationship of all dependents.
 Name
 Address
 If to adjust claim for medical attendance or funeral expenses, state names and addresses of all other such creditors and amounts of claims, if known.
 Name

Address
 Name
 Address

IV.

(Here state any further facts that may be desired.)

.....

Wherefore your petitioner prays, that the above named respondent be required to answer this petition; that a time and place be fixed for hearing hereof and due notice thereof given; and that upon such hearing, an order of award be made by your Honorable Board granting such relief as the said applicant may be entitled to in the premises.

Dated at this day of 19...

(Signed)

Address

Paragraph (a) of Section 19 of the Workmen's Compensation Act provides: "If the compensation claimed is for a *partial permanent* or *total permanent incapacity* or for *death*, then the dispute may, at the election of either party, be determined by a committee of arbitration, which election for a determination by a committee shall be made by the petitioner filing with the Board his election in writing with his petition or by the other party filing with the Board his election in writing within five days of notice to him of the filing of the petition, * * * The party filing his election for a committee of arbitration shall with his election deposit with the Board the sum of twenty dollars to be paid by the Board to the arbitrators selected by the parties as compensation for their services as arbitrators;" and that in case neither of the parties make such election or fail to deposit the sum of twenty dollars with such election, or, in case the compensation claimed is not "for a partial permanent or total permanent incapacity or for death," an arbitrator designated by the Board shall determine said matter.

(In case petitioner elects to have said matter determined by a committee of arbitration, the following election must be filed and the sum of twenty dollars deposited with the Board.)

NOTICE OF ELECTION FOR A DETERMINATION BY A COMMITTEE OF ARBITRATION.

The petitioner herein elects to have the above entitled matter determined by a Committee of Arbitration.

Dated this day of, 19...

.....
 Petitioner.

Address

.....
 Petitioner's Attorney or Agent.

Address

Telephone Number

Notice by Board of Filing of Claim.

Form 77.

YOU ARE HEREBY NOTIFIED that application for adjustment of claim in the above entitled matter was filed with said Board on the day of, 19...; that under paragraph (a) of Section 19 of the Workmen's Compensation Act, providing for cases where claim is made for *partial permanent* or *total permanent incapacity* or *for death*, you may elect to have said matter determined by a Committee of Arbitration by filing with this Board your "*election in writing within five days*" of the receipt of this notice and by depositing with this Board with such election the sum of twenty dollars, to be paid to the arbitrators selected by the parties hereto as compensation for their services as such arbitrators. In case you do not make such election and deposit, or, in case the compensation claimed is not for "*partial permanent* or *total permanent incapacity* or *for death*," an arbitrator designated by this Board will determine the questions in dispute in said matter.

Form (Notice of Election for a Determination by a Committee of Arbitration) is enclosed herewith.

Form 33 (Memorandum of Names and Addresses for Service of Notices) is also enclosed herewith, and should be filled in and filed with this Board at once.

Dated this day of, 19...

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By

Secretary.

Request for Appointment of Member on Committee of Arbitration.

Form 11.

YOU ARE HEREBY NOTIFIED to appoint a member on a Committee of Arbitration, in the above matter, and to file your notice of such appointment with the Industrial Board of Illinois within seven (7) days after the receipt of this notice, in default of which this Board will appoint a suitable person to act for you as a member of said Committee of Arbitration, for the purpose of hearing and determining all questions in dispute between the parties in the above entitled matter.

Dated this day of, 19...

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By

Secretary.

Notice of Election to have Determination by Committee of Arbitration and Appointment of Member.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that the undersigned, h..... elected to have the above entitled cause determined by a Committee of Arbitration, and you are further notified that, whose post-office address is, has been chosen by as a member of the Committee.

Noice of Appointment of Member of Committee of Arbitration.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that whose Post Office address is, has been chosen as a member of the Committee of Arbitration is the above entitled matter by the undersigned.

Notice of Appointment of Member of Committee of Arbitration by Board to Fill Vacancy.

Form 13.

You are hereby notified that the Industrial Board has appointed of to act as a member of the Committee of Arbitration, in the above entitled matter representing, who failed to appoint a representative on said Committee of Arbitration within seven (7) days after notification by this Board, as required by statute, and that therefore the above named appointee of this Board will act on said Committee of Arbitration.

Dated at Chicago, Illinois, this day of, 19...

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By

Secretary.

Subpoena.**Form 15.**To **GREETING:**

You are hereby required and commanded to be and appear before of the Industrial Board of Illinois, at in the City of County of State of Illinois, on the day of A. D. 19.., at o'clock in the noon, then and there to give evidence in a certain matter pending before said wherein is applicant and is respondent.

Hereof fail at your peril.

GIVEN under the hand and seal of this Board this day of A. D. 19...

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By
Member of Board.

Notice to Produce Books, Papers and Records.**Form 16.**To **GREETING:**

YOU ARE HEREBY REQUIRED AND COMMANDED to appear and produce before of the Industrial Board of Illinois, at in the city of County of State of Illinois, on the day of 19.., at o'clock M., the following books, papers and documents relating to the matter now pending before this Board, wherein is applicant and is respondent.

Hereof fail at your peril.

GIVEN under the hand and seal of this Board this day of A. D. 19...

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By
Member of Board.

Request for Physical Examination by Employer.

Form 8.

YOU ARE HEREBY REQUESTED to submit yourself, at the expense of the undersigned, for examination by a duly qualified medical practitioner or surgeon to be selected by the undersigned, and for that purpose to be and appear at on the day of at o'clockM., and if such time and place is not reasonably convenient, you are requested immediately to notify the undersigned at what time and place it will be reasonably convenient for you to submit to such examination, which examination will be for the purpose of determining the nature, extent and probable duration of the injury claimed to have been received by you, and to ascertain the amount of compensation, if any, which may be due on account of any disability resulting therefrom.

Dated this day of, 19...

.....
Employer.

Address

Appointment of Physician by Board for Examination of Claimant.

Form 17.

You are hereby appointed by the Industrial Board of the State of Illinois to examine, an injured employee, who claims compensation from of on account of an accidental injury, alleged to have been sustained by said employee on the day of; such examination to be made by you on the day of at o'clockM., at

Dated this day of, 19...

INDUSTRIAL BOARD,
(SEAL) By
Member of Board.

Tender of Services of Industrial Board for Amicable Adjustment of Disputed Claim.

Form 71.

Application for Arbitration of the above entitled matter having been filed with this Board on the day of, 19.., you are hereby notified that this Board tenders its services to the parties hereto in order that they may arrive at an amicable adjustment thereof. For that purpose are enclosed herewith blank forms, which should be filled in by the respective parties (Form No. by the employee; Form No. by the employer; and Form No. by the attending physician) and returned promptly to this Board.

Form 26 (Stipulation and Waiver of Arbitration), which is also enclosed herewith, should also be signed by both parties, or their respective attorneys, after the contentions of the parties have been set forth therein, and returned to this Board. You will then be notified of the place, date and hour the matter will be taken up by the Board. This tender to be accepted within ten days from date.

Dated this day of, 19...

INDUSTRIAL BOARD OF ILLINOIS,

By

Stipulation and Waiver of Arbitration.

Form 26.

The facts in this case being undisputed, and the only matter in difference between the parties hereto being the construction and application to said facts of the Workmen's Compensation Act, and the parties hereto desiring to obtain a decision of said matter by the Industrial Board without resorting to arbitration, do hereby stipulate and agree as follows:

That the accident to the employee, upon which the claim for compensation in this cause is based, occurred on the day of, 19.., in the city or town of, County of, State of Illinois, and that the same arose out of and in the course of his employment. That the character and nature of the injury and the result thereof is substantially as set forth in the reports of the employee, employer and attending surgeon, which are filed herewith and made a part hereof:

That the questions in dispute and the contentions of each of the parties with reference thereto are as follows:

QUESTIONS IN DISPUTE

.....

EMPLOYEE'S CONTENTION

.....

EMPLOYER'S CONTENTION

.....

That the arbitration of the matters in difference between the

parties hereto, provided for in said Workmen's Compensation Act, be and the same is hereby waived; and that said matters are hereby submitted to the Industrial Board for its decision. It is further stipulated and agreed that the decision of said Board in this cause, pursuant to this stipulation, and based upon the facts set forth in the reports, etc., filed herein, shall be valid and binding, and shall have the same validity, force and effect as if said cause had proceeded to arbitration in due course, and been brought before the full Board for review of the decision of an arbitrator or arbitration committee herein.

In witness whereof the parties have signed this stipulation at
 in the County of, State of Illinois, this day
 of, 19...

.....
 Applicant.

.....
 Respondent.

Agreed Statement of Facts.

Form 21.

The parties to the above entitled matter hereby submit the following as an agreed statement of facts, properly authenticated by the signatures of the parties hereto, as required by the Workmen's Compensation Act.

IT IS AGREED that the facts herein, appearing upon the hearing before the Committee of Arbitration, were as follows:

.....

Stipulation Waiving Stenographic Report.

IT IS HEREBY STIPULATED by the parties hereto that a stenographic report of the testimony herein, as provided in Section 16 of the Workmen's Compensation Act, be, and the same hereby is waived.

Employer's Report of Accident.**Form 74.**

This form to be used ONLY in cases where parties accept tender of services of Board for amicable adjustment.

Name of injured employee (in full)

Occupation
(At time of accident.)

Residence
(Street and No.) (City, Town, or other place.)

Age Sex

Employer's name Business.....

Address

Location of Plant
(Street and No.) (City, Town, or other place.)

1. Date, hour and place of accident—Specify exactly where and if on employer's premises.
.....
.....

2. What was the employee doing at the time? Was it for the purposes of your business? Was it part of his regular work?
.....
.....

3. Describe occurrence fully—part of plant—works—machine—tool—article—other matters and things connected with accident.
.....
.....

4. What injuries did employee sustain?
.....
.....

5. Was any person not in your employ to blame for accident? (So far as you now know.) Specify.
.....
.....

6. Name and address of attending physician.
.....
.....

7. Where is injured employee now?
.....

8. Has employee worked any since date of accident? Specify. Is employee now able to resume work? If not, about how long before he will be able?
.....At what wages? If so, when was he first able to do so?, 19... (Give your own opinion)

9. What were employee's weekly earnings* with you at time of accident?
\$..... per week.
10. How long had you been paying him at this rate?
..... Did he work on Sundays?
11. How long had he been working for you at the work in which he was injured?
.....
12. What were his total earnings* with you at that work during the past twelve months, or during the shorter time he was at that work with you?
\$..... from, 19.., to, 19...
13. During how much, if any, of that time did he not work?
.....
14. State cause and duration of each material loss of time.
Usually close down weeks. Sickness weeks.
Business slack weeks. Vacation weeks. (Any other cause.)
.....
15. What would be average weekly earnings during past twelve months of employees of same class in same employment and same location?
\$..... per week.
16. Have you paid or allowed injured employee anything for period of his disability? If so, state particulars.
.....
..... Total amount, \$.....
.....
Dated this day of, 19.., at
Employer's Name
Signed by
Official Title

*Include in earnings the fair value of anything such as board, gratuities, etc., forming part of remuneration, but not payments covering special expenses entailed by nature of employment.

Employee's Report of Accident.

Form 77.

This form to be used ONLY in cases where parties accept tender of services of Board for amicable adjustment.

Claimant's Name (in full)

Residence

(Street and No.) (City, Town, or other place.)

State your age, occupation and sex—married or single—speak English?

State name and business of employer with whom you were employed when accident occurred.

1. State date and hour and place of accident. Specify exactly where and if on employer's premises.

2. What were you doing at the time? Was it for the purpose of your employer's business? Was it part of your regular work?

3. Describe occurrence fully—part of plant—works—machine—tool—article—other matters or things connected with accident.

4. What injuries did you sustain?

5. Was any person other than your employer or fellow-workmen to blame for accident? Specify.

6. Name and address of attending physician.

7. Have you worked any since date of accident? Specify. Are you now able to resume work? If not, about how long before you will be able in your opinion?

..... At what wages? If so, when were you first able to do so?, 191... ..

8. What were your weekly earnings* with your employer at time of accident?

\$..... per week.

9. How long had said employer been paying you at this rate?

..... Do you work on Sundays?

10. How long had you been working for your employer at work in which you were injured?

11. What were your total earnings* with said employer at that work during the past twelve months, or during any shorter time you were at that work with him?

\$..... from, 191..., to, 191...

12. During how much, if any, of that time did you not work?

.....
.....

13. What was the cause and duration of each material loss of time?
Usually close down weeks. Sickness weeks.
Business slack weeks. Vacation weeks. (Any other cause.)

14. Has your employer paid or allowed you anything for period of your disability? State particulars.

..... Total amount \$.....

I declare that all the foregoing is true and correct, and I claim compensation for the above mentioned accident.

Signed this day of, 19... at

.....
Address

*Include in earnings fair value of anything such as board, gratuities, etc., forming part of remuneration, but not anything paid to cover any special expenses entailed by nature of employment.

Surgeon's Report.

Form 75.

This form to be used ONLY in cases where parties accept tender of services of Board for amicable adjustment.

Name of injured workman

Address

1. In whose employ was injured when accident happened?
.....
2. State employee's age, sex and occupation.
.....
3. Had employee any previous physical defect? (e. g., Hernia, of Sight, Hearing, Limbs, Fingers, Spine.) If so, specify.
.....
4. Date and hour of accident.
.....
5. State nature, extent, degree and region of injury—MUST be definitely stated, and MARKED as clearly as possible on CHART ON BACK OF THIS REPORT.)
.....
6. Did you render first treatment? If not, who did? When?
.....
7. State your treatment. (It is not sufficient to say "Usual," "Antiseptic," "Surgical," or "Dressing applied." etc. State sufficient to indicate clearly means taken to remedy injury.)
.....
.....
.....
8. Give your estimate of minimum length of total disability (reckoning from its commencement) resulting from the injury.
.....
9. Is employee now able to resume work? If so, on what date was he first able to do so?
.....
.....
10. In your opinion, will any permanent disability result from injury? If so, nature and extent thereof.
.....

State anything additional of interest in this case.
.....
.....

Signed this day of, 19.., at

.....
Attending Surgeon.

Notice of Hearing by Board for Amicable Adjustment.

Form 72.

You are hereby notified that the above entitled matter has been referred to the Chief Industrial Examiner for the purpose of a possible amicable adjustment of the disputed questions involved therein.

And you are further notified to appear before said Examiner at in the City of, County of in said State, at o'clock in thenoon, on theday of, 19...

Dated this day of, 19...

INDUSTRIAL BOARD OF ILLINOIS,

By

Notice to Board of Failure to Reach Agreement and Request for Arbitration.

Form 9.

TO THE INDUSTRIAL BOARD OF THE STATE OF ILLINOIS:

Notice is hereby given that and have failed to reach an agreement between themselves with reference to a claim for compensation under the Workmen's Compensation Act of the State of Illinois, arising out of an alleged accidental injury on the day of 19.., and the undersigned therefore requests that said claim may be arbitrated in accordance with the provisions of said Act, and that your Honorable Board may take the requisite steps for the appointment of a Committee of Arbitration to hear and determine said claim.

Notice by Employee of Exercise of Option to Proceed for Recovery of Damages or Award of Compensation Under Act.

Form 39.

You are hereby notified that by reason of your failure to comply with the demand of the Industrial Board of the State of Illinois, under Section 26 of the Workmen's Compensation Act, that you furnish sworn statement of financial ability, or security, indemnity or bond, or sufficient amount of insurance, or other satisfactory provision for securing the payment of compensation provided by said Act, I, the undersigned, hereby exercise the option given to me by the provisions of said Act to proceed against you for, and that I have accordingly filed proceedings therefor on this date in at on account of accidental injuries sustained by me while in your employment on the day of A. D. 19...

Notice by Board of Hearing.

Form 14½.

YOU ARE HEREBY NOTIFIED that a hearing in the above entitled matter will be held on the day of, 191.., at, in the City of, Illinois, before the arbitrator designated by the Industrial Board of Illinois.

Dated this day of, 191...

INDUSTRIAL BOARD OF ILLINOIS,

By

Arbitrator.

Decision of Arbitrator.**Form 18A.**

Notice and application for adjustment of claim having been filed in the above entitled matter, and the undersigned having been designated by said Board as Arbitrator thereof, and said matter having come on to be heard before said Arbitrator at in the City of said County and State, at o'clock in the noon on the day of 19...., and, after hearing the proofs and allegations of the parties hereto, and having made careful inquiry and investigation of said matter and being fully advised in the premises, said Arbitrator finds:

That the petitioner and the respondent were on the day of, 19...., operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned said suffered accidental injuries which did arise out of and in the course of his employment; that notice of said accident was given to said respondent and demand for compensation on account thereof made on said respondent within the time required under the provisions of said Act.

Decision and Award by Committee of Arbitration.**Form 018.**

Notice and application for adjustment of claim having been filed the Industrial Board in the above entitled matter, and the Board having requested the parties to appoint their respective representatives on a Committee of Arbitration and said Committee having been duly formed, consisting of, representing said applicant, and, representing said respondent, and, agent of the Industrial Board as Chairman thereof; and the said cause having come on to be heard at, in the city of, county of, and State of Illinois, on the day of, 19...., at o'clock in the noon, the committee, after hearing the proofs and allegations of the said applicant and said respondent, having made careful inquiry and investigation of said matter, and being duly advised in the premises, doth find that it has jurisdiction of the subject matter and the parties herein, and further find:

1. That the said parties were on the day of, 19...., operating under the provisions of the Illinois Workmen's Compensation Act.

2. That the applicant on the day of suffered accidental injuries while in the employ of respondent, and that such injuries did arise out of and in the course of his employment.

3. That is entitled to receive compensation on the basis of per

4. That applicant been furnished medical and hospital aid, to the amount of Dollars.

5. That the applicant was temporarily totally incapacitated for work for a period of weeks, and is entitled to the sum of dollars per week for such period beginning on the *eighth day* after the date of injury, dollars of which is now due.

6. That the applicant is entitled to compensation herein because the injury sustained caused (..... serious and permanent disfigurement of the hands, head or face; partially incapacitated from pursuing his usual occupation, specific loss of or permanent and complete incapacity for work.)

7. That applicant is entitled to have and receive from respondent the further sum of dollars per week for the further period of weeks, or until otherwise relieved therefrom under the terms and provisions of the Workmen's Compensation Act.

8. That of the last named amount there is now due the applicant the sum of dollars.

Notice of Decision of Arbitrator.

Form 65.

TAKE NOTICE, that on the day of, there was filed with the Industrial Board, Chicago, Illinois, the decision of the Arbitrator in the above entitled matter, a copy of which decision is enclosed to you herewith; and

YOU ARE FURTHER NOTIFIED that unless a petition for review is filed by you with the Industrial Board within fifteen (15) days after receipt by you of this notice and copy of such decision, and an agreed statement of the facts appearing upon the hearing before the Arbitrator or a correct stenographic report of the proceedings at such hearing within twenty (20) days, then and in that event the decision of the said Arbitrator shall be entered of record by this Board as the decision of the Industrial Board.

YOU ARE FURTHER NOTIFIED that, for sufficient cause shown, this Board is authorized to grant further time in which to petition for such review or to file such agreed statement or stenographic report.

Dated at Chicago, Illinois, this day of 19.....

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By

Secretary.

Petition for Review of Agreement or Award.

Form 24.

Petitioner of respectfully represents that on the day of 19...., at Illinois, an agreement (or award, as the case be) was duly made in the above entitled matter, of compensation due from growing out of an accidental injury arising out of and in the course of the employment of as an employee of

Petitioner further represents that said agreement (or award, as the case may be) should be reviewed by your Honorable Industrial Board upon the ground that the disability of has, subsequent to the date of said agreement (or award, as the case may be), recurred (increased, diminished, or ended, as the case may be).

(Allege what compensation has been paid, if any, and any other facts and circumstances proper for the Board to consider under the statute upon petition for review.)

.....

.....

Petitioner therefore prays that proper notices may be given to all parties interested under this petition for review, and that this petition may be set down for hearing at some date to be fixed by your Honorable Industrial Board, and that upon such hearing upon review, said compensation payments as fixed in said agreement (or award, as the case may be) may be re-established (increased, diminished or ended, as the case may be).

Memorandum of Name and Address for Service of Notices.

Form 33.

To the Industrial Board of the State of Illinois:

The undersigned requests that all notices of proceedings in the above entitled matter be served personally or by registered mail upon the party or attorney whose names and addresses follow on this memorandum.

Notice by Board of Hearing for Review.

Form 25.

Take notice that on the day of 19...., the above named filed a petition for review with the Industrial Board of an agreement (or award, as the case may be) made between and in the above entitled matter on the ground that the disability of said has, subsequent to the making of said agreement (or award, as the case may be), recurred (increased, diminished or ended, as the case may be).

You are further notified that in accordance with the rules of said Board, your appearance and answer to said petition must be filed with said Board on or before the day of A. D. 19....

Further take notice that the Industrial Board has set said petition for review for hearing at the office of said Board of Chicago, Illinois, on the day of A. D. 19...., at o'clock M., at which time and place you may appear and present such evidence as may be relevant to such inquiry upon review.

Dated, Chicago, Illinois, this day of A. D. 19..

INDUSTRIAL BOARD,

(SEAL)

By

Secretary.

Notice by Board to Introduce any Additional Testimony.

Form 66.

You are hereby notified that on the day of 191., the Industrial Board did take and assign for consideration the above entitled cause, pending before the Board upon petition for review. Unless you shall notify this within twenty days of the receipt of this notice, that you desire to introduce additional testimony and to be heard upon the issues involved in said cause, the same will be closed, and the Board will dispose of said cause upon the records, stenographic reports, etc., made and filed in the proceedings had on arbitration of said cause. Upon receipt of notice from either of the parties to the said cause, that you desire to introduce additional testimony and to be heard, the said cause will be placed upon the calendar for setting.

If the party or parties hereto do not desire to introduce additional testimony or to be heard before the Board on Review, briefs may be filed, together with written arguments of not to exceed five typewritten pages, within twenty days of the receipt of this notice, and the same will become a part of the files and have the consideration of the Board herein.

INDUSTRIAL BOARD OF ILLINOIS,

.....
*Secretary.***Decision of Board on Review.**

Form 22.

This matter coming on to be heard before the Industrial Board of the State of Illinois upon the petition for review of the decision of the Committee of Arbitration, filed herein on the day of 19...., and said Board having considered said petition and being fully advised in the premises:

IT IS THEREFORE ORDERED AND DETERMINED by said Board as follows:

.....
.....

Dated at Chicago, Illinois, this day of A. D. 19..

(SEAL)

.....
.....
.....
Industrial Board.

Judgment Stay Bond Upon Petition for Review.

Form 34.

KNOW ALL MEN BY THESE PRESENTS, That we
 and (here insert name of surety), of County, in
 the State of Illinois, are held and firmly bound unto of
, in the penal sum of (here state an amount double the
 amount of the award) lawful money of the United States,
 for the payment of which well and truly to be made we bind ourselves,
 our heirs, executors and administrators, jointly, severally and firmly
 by these presents.

Witness our hands and seals this day of 19..

The condition of the above obligation is such that whereas the
 said did on the day of, 19.., before the
 Industrial Board of the State of Illinois, secure an award against the
 above bounden for payment of compensation (if the award
 is upon the decision of the Committee of Arbitration, so state), such
 compensation and the payment thereof to be as follows, to-wit:

.....

 And whereas the said has filed notice with the Indus-
 trial Board of the State of Illinois of application for the entry of
 judgment in the Circuit Court of County, upon said award,
 in accordance with the statute;

And whereas it is the desire of the above bounden to file
 and prosecute proceedings for review by the Industrial Board of said
 award, in accordance with the Statute;

NOW THEREFORE, If the said above bounden shall
 duly prosecute with effect said proceedings for review before said In-
 dustrial Board, and, moreover, pay the amount of said award with
 costs and interest entered and to be entered against him in case said
 award is upheld and affirmed upon review by said Industrial Board,
 then the above obligation is to be void, otherwise to remain full force
 and virtue.

.....[SEAL]

.....[SEAL]

Approved this day of 19..

INDUSTRIAL BOARD OF ILLINOIS,

By

Member of Board.

Petition for Award of Lump Sum.

Form 28.

Now comes petitioner herein, and respectfully represents that he is (or, petitioner's decedent was) and was on the day of 191., an employee in the service of an employer, at, in the City of, Illinois; that both said employer and said employee were working under and subject to the provisions of the Workmen's Compensation Act; and that on, to-wit, the day of 191., said employee suffered accidental injuries, arising out of in the course of his said employment, as a result of which (state nature of injury).

Petitioner further shows that said employer has paid compensation on account of said injury (or death) as follows.

.....

.....

.....

Petitioner further shows that said employee earned as wages the sum of \$...... per week (month or annum); that under the provisions of the Workmen's Compensation Act, petitioner is entitled to compensation at the rate of \$...... per week for a period of weeks. (In case of death, state average annual wages and that four times such average annual wages amounts to the sum of \$......; also that petitioner is a dependent of said employee, in this, that petitioner is the surviving widow, or child, with whom said employee lived at the time of his death, and whom he was under legal obligations to support; or in case of parents, grandparents or other lineal heirs, that said employee contributed to petitioner's support within four years previous to the time of said injury, if the petition is presented by an administrator or executor, allege that petitioner is the duly qualified and acting administrator or executor, as the case may be, of said deceased employee).

Petitioner further shows that ...he believes it to the best interest of the parties that compensation now due and to become due be paid in a lump sum, for the following reasons: (Show necessity for such payment, and proper anticipated use of the money, etc).

.....

.....

.....

.....

.....

.....

.....

Petitioner therefore respectfully prays that proper notices may be given to the interested parties, and particularly to said employer at, Illinois, and that a hearing may be had at some day to be fixed by your Honorable Board, and that upon such hearing said Board may order the commutation of the compensation to an equivalent lump sum equal to the total sum of the probable future payments capitalized at their present value upon a three per cent basis with annual rests in accordance with the provisions of the Workmen's Compensation Act.

Assent by Employer to Order for Lump Sum.

The undersigned employer, hereby indicate our willingness to pay compensation payable herein commuted in accordance with Section 9 of the Workmen's Compensation Act, if so ordered by the Industrial Board of Illinois.

Notice by Board of Petition for Lump Sum.

Form 27.

YOU ARE HEREBY NOTIFIED that a petition has been filed with the Industrial Board by of, praying for a commutation of the compensation now due and to become due of by reason of an accidental injury alleged to have been sustained on the day of 19.., such commutation to be an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at 3 per cent per annum with annual rest.

YOU ARE FURTHER NOTIFIED that if you desire to appear to or answer said petition, you are required by the rules of Industrial Board to do so by the day of 19.., and that unless you are further notified, a hearing will be held in the offices of the Industrial Board, on said petition, on the day of 19.... at M., at which time and place you may appear and present any evidence or argument relevant to the inquiry to be made by said Board on said petition.

Dated, Chicago, Illinois, this day of 19....

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By

*Secretary.***Answer to Petition for Award of Lump Sum.**

Form 29.

Now comes respondent herein, and for answer to the petition of herein, praying for a lump sum settlement of claim for compensation arising out of the alleged accidental injury sustained by on the day of states:

(Admit facts controverted and deny other allegations.)

Respondent further answering, says that believes that it is not for the best interests of the parties that the compensation, if any, which is now due or which is to become due on account of said alleged accidental injury to be paid in a lump sum, for the following reasons, to-wit:

(Show no necessity for such payment, liability to waste, etc.)

Respondent therefore prays that said alleged compensation now due and to become due be not ordered paid in a lump sum, and that said petition may be dismissed.

Order Awarding Lump Sum.

Form 30.

A petition for the payment of a lump sum having been filed with the Industrial Board in the above entitled matter on the day of 19.., and the Board having given proper notice to the interested parties, and said matter now coming on to be heard, pursuant to such notice, before this Board, after hearing the proofs and allegations of the said petitioner and said respondent, and having made careful inquiry and investigation of said matter, and being fully advised in the premises;

IT IS ORDERED, ADJUDGED AND DECREED by the Industrial Board as follows:

(Insert findings as to whether petition be allowed or disallowed and dismissed, with recital that it is or is not, as the case may be, to the best interest of the party that compensation be paid in lump sum.)

.....

.....

.....

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that this order for a commutation of compensation herein to the lump sum of dollars (\$.....) shall be binding and conclusive upon the parties hereto, except such parties, or either of them, reject the same within ten (10) days after notice of this award, by filing a written rejection thereof with this Board, in which event the compensation herein shall be payable in installments as provided by Section IX of the Workmen's Compensation Act.

.....

.....

.....

INDUSTRIAL BOARD OF THE STATE OF ILLINOIS.

Notice of Award of Lump Sum.

Form 31.

TAKE NOTICE, That on the day of 19.., the Industrial Board of the State of Illinois entered an order in the above entitled matter, providing for a commutation of the compensation due and to become due herein to an equivalent lump sum, equal to the total sum of the probable future payments of such compensation capitalized at their present value upon the basis of interest at three per cent (3 per cent) per annum with annual rests, amounting to dollars (\$.....), it appearing to this Board to be to the best interest of the parties hereto that such compensation be so paid in a lump sum.

FURTHER TAKE NOTICE, That said order for a lump sum settlement will become binding and conclusive upon all parties interested therein unless written rejection thereof is filed with the Industrial Board, within ten (10) days from this date.

Dated Chicago, Illinois.....19..

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By

Secretary.

Notice of Rejection of Award of Lump Sum.

Form 32.

To the Industrial Board of the State of Illinois:

The undersigned hereby rejects the award of lump sum compensation made and entered on the day of 19.., by the Industrial Board in the above entitled matter.

Receipt on Account for Compensation.

Form 43.

PAID FOR Death, Specific Loss, Disfigurement, Disability.

Amount paid to date, including this payment, \$.....

Amount remaining due, \$.....

I, have received of the sum of dollars and cents, being the compensation due from the day of, 19.., to the day of, 19.., under the provisions of the Workmen's Compensation Act, subject to review by the Industrial Board for accidental injuries sustained by on the day of, 19.., while in the employ of.....

(address)

\$.....

(Name of Employee or Beneficiary)

Date....., 19..

(Street and Number)

Receipt for Compensation in Settlement.

Form 42.

Received of the sum of dollars and cents, making in all, with weekly payments already received by me, the total sum of dollars and cents in settlement of compensation under the Illinois Compensation Law, for all injuries received by me on or about the day of 19.., while in the employ of (address) subject to review by the Industrial Board.

Witness my hand this.....19..

Witness

(address)

Request by Board for Reports and Receipts.

Form 20.

You are hereby requested immediately to notify this Board as to the disposition made in the following named cases.

IF FINAL COMPENSATION has been paid under the provisions of the WORKMEN'S COMPENSATION ACT, forward SETTLEMENT RECEIPT or RELEASE. Also show *total length of disability* in each case.

If compensation is being paid under the provisions of the ACT, in weekly or semi-monthly installments, show the amount that has been paid to date, and also the amount to be paid in each case.

If no payments of any kind have been made, so state and give reasons for non-payment.

| EMPLOYER | INJURED EMPLOYEE | DATE OF ACCIDENT |
|----------|------------------|------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

INDUSTRIAL BOARD OF ILLINOIS,

By

Demand by Board for Security for Payment of Compensation.

Form 36.

Demand is hereby made upon you under the authority given the Industrial Board by Section XXVI of the Workmen's Compensation Act:

That within ten days of the receipt by you of this written notice, you either:

1. File with the Industrial Board a sworn statement, showing your financial ability to pay compensation provided for in said Act, normally required to be paid; or,

2. Furnish security, indemnity or a bond guaranteeing the payment by you of the compensation provided for in said Act, normally required to be paid; or,

3. Furnish the Board with satisfactory evidence that you have insured to a reasonable amount your normal ability to pay such compensation in some corporation, association or organization authorized, licensed or permitted to do such insurance business in this state; or

4. Make some other provision for the securing of the payment of compensation provided for in said Act, normally required to be paid.

You are further notified that you are required by the provisions of said Act to furnish the Industrial Board at Chicago, Illinois, within twenty days of the receipt of this written demand and notice, evidence of your compliance with one of the above four alternatives, and that the steps taken by you pursuant to this notice and demand for compliance with the requirements of said Act as above stated, shall be subject to the approval of the Industrial Board.

You are further notified that if one or more of the above named four alternatives are not complied with by you within ten days of the receipt of this demand and notice, or if such compliance on your part shall not be approved by the Industrial Board, and you fail to properly comply with this written demand within ten days after the receipt by you of written notice of non-approval, then and in such case you shall be liable for compensation to any injured employee, or his personal representative, according to the terms of said Act, or for damages in the same manner as if you had elected not to accept this Act, at the option of such employee or his personal representative.

Prompt compliance with the above demand is respectfully urged.

Dated at Chicago, Illinois, this day of A. D. 19..

INDUSTRIAL BOARD,

(SEAL)

By

Member of Board.

Notice of Approval by Board of Security.

Form 37.

You are hereby notified that the Industrial Board has approved your compliance with Section 26 of the Workmen's Compensation Act upon proof thereof in accordance with the provisions of said Act, on the day of, A. D. 19....

INDUSTRIAL BOARD OF ILLINOIS,

(SEAL)

By

Notice of Non-Approval by Board of Security.

Form 38.

You are hereby notified that the Industrial Board has refused to approve your attempted compliance with Section XXVI of the Workmen's Compensation Act, upon written demand of this Board made upon you, for the following reasons, to-wit:

.....

You are further notified that it becomes your duty to properly comply with the provisions of said Act, as outlined in said demand heretofore made upon you by this Board, within ten days after the receipt by you of this notice of non-approval.

In default thereof you will be liable in accordance with the provisions of said Act for compensation to any injured employee, or his personal representative, according to the terms of said Act, or for damages in the same manner as if you had elected not to accept said Act, at the option of said employee, or his personal representative.

Prompt compliance with this notice is respectfully urged.

Dated, Chicago, Illinois, 19....

INDUSTRIAL BOARD,

(SEAL)

By

*Secretary.***Request by Board for Financial Report of Employer.**

Form 53.

We have notice from the that your are not covered by their policy.

Under the Workmen's Compensation Act it is necessary for you to secure the payment of compensation to all your employees. If you do not desire to carry insurance for these employees, please notify this office immediately and furnish affidavit embodying the following facts:

State your assets over liabilities;

State the number of persons employed as above mentioned:

State the amount paid as damages to these employees during each of the past two years.

Respectfully,

Security Supervisor.

STATE OF ILLINOIS

INDUSTRIAL BOARD

DISTRICTS

District No. 1—Chicago—Comprised of the following counties:

| | | | |
|----------------------------|------------------------------|-------------------------------|----------------------|
| Cook, Lake, McHenry, | Dupage, Kane, Kendall, | Will, Kankakee, Dekalb, | Grundy, La Salle. |
|----------------------------|------------------------------|-------------------------------|----------------------|

District No. 2—Freeport:

| | | | |
|----------------------|----------------------------|-------------------|------|
| Boone, Winnebago, | Stephenson, Jo Daviess, | Carroll, Ogle, | Lee. |
|----------------------|----------------------------|-------------------|------|

District No. 3—Rock Island:

| | | | |
|-----------------------|------------------------|-----------------------|---------|
| Whiteside, Bureau, | Henry, Rock Island, | Mercer, Henderson, | Warren. |
|-----------------------|------------------------|-----------------------|---------|

District No. 4—Peoria:

| | | | |
|------------------------------|-------------------------------------|------------------------------|----------------------|
| Knox, Stark, Marshall, | Livingston, McLean, Woodford, | Peoria, Mason, Putnam, | Fulton, Tazewell. |
|------------------------------|-------------------------------------|------------------------------|----------------------|

District No. 5—Danville:

| | | | |
|--------------------------|---------------------|--------------------|--------|
| Iroquois, Vermillion, | Ford, Champaign, | Piatt, Douglas, | Edgar. |
|--------------------------|---------------------|--------------------|--------|

District No. 6—Springfield:

| | | | |
|--------------------------------|----------------------------|--|------------------------------|
| Menard, Logan, Sangamon, | Cass, Scott, Greene, | Macoupin, Montgomery, Christian, | Macon, Dewitt, Morgan. |
|--------------------------------|----------------------------|--|------------------------------|

District No. 7—Quincy:

| | | | |
|------------------------|---------------------|--------|-------|
| Hancock, McDonough, | Adams, Schuyler, | Brown, | Pike. |
|------------------------|---------------------|--------|-------|

District No. 8—Mattoon:

| | | | |
|----------------------|---------------------|-----------------------|----------------------|
| Moultrie, Shelby, | Cole, Effingham, | Clark, Cumberland, | Jasper, Crawford. |
|----------------------|---------------------|-----------------------|----------------------|

District No. 9—Centralia:

| | | | |
|-------------------------------|----------------------------------|-------------------------------|-------------------------------------|
| Marion, Clay, Richland, | Lawrence, Wabash, Edwards, | Wayne, White, Hamilton, | Franklin, Jefferson, Fayette. |
|-------------------------------|----------------------------------|-------------------------------|-------------------------------------|

District No. 10—East St. Louis:

| | | | |
|---------------------------------|---------------------------------|------------------------------------|---------|
| Calhoun, Jersey, Madison, | Clinton, Bond, St. Clair, | Washington, Perry, Randolph, | Monroe. |
|---------------------------------|---------------------------------|------------------------------------|---------|

District No. 11—Cairo:

| | | | |
|------------------------------------|-------------------------------|---------------------------------|----------------------|
| Jackson, Williamson, Saline, | Gallatin, Hardin, Pope, | Massac, Johnson, Pulaski, | Alexander, Union. |
|------------------------------------|-------------------------------|---------------------------------|----------------------|

DEGREES OF DISABILITY FOR SPECIFIED INJURIES, ACCORDING TO VARIOUS FOREIGN STANDARDS AND AUTHORITIES, EXPRESSED IN PERCENTAGES OF TOTAL DISABILITY.

| Nature of injury. | Imbert, etc. | German adjudica- tions. | French adjudica- tions. | Austrian imperial office ratings. | Italian law. |
|---------------------------------------|-----------------|-------------------------------|-------------------------------|--|-----------------|
| | Per cent. | Per cent. | Per cent. | Per cent. | Per cent. |
| Loss of right or major— | | | | | |
| Arm | 75 | 60-75 | 60-85 | 66-83 | 80 |
| Forearm | 70 | 66-75 | 70-80 | | 70-80 |
| Disarticulation at shoulder..... | 85 | | | | |
| Hand | 65 | 50-75 | 55-80 | 50-83 | 70 |
| Thumb | 30 | 30 | 14-60 | 25-33 | 30 |
| Including metacarpal bone..... | 35 | | | | |
| One phalange only..... | 15 | 10-20 | 6-30 | 16 | 15 |
| Index finger | 15 | 10-15 | 8-15 | | 20 |
| Two phalanges | 10 | 10 | 7-20 | | |
| One phalange only..... | 6 | 0-10 | 2-12 | 10 | |
| Middle finger | 10 | 20 | 6-16 | | 8 |
| Two phalanges | 8 | 0-10 | 5-10 | | |
| One phalange only..... | 5 | 0-10 | 3-10 | 1-10 | 5 |
| Ring finger | 10 | 15 | 8-11 | | 8 |
| Two phalanges | 8 | 0-10 | 5-10 | | |
| One phalange only..... | 5 | 0-10 | 0-8 | | 5 |
| Little finger | 8 | 10 | 6-8 | | 12 |
| Two phalanges | 6 | 0-10 | 3-8 | | |
| One phalange only..... | 3 | 0 | 0-6 | 8-10 | 5 |
| Thumb and index finger..... | 45 | 40 | | | |
| Index and middle fingers..... | 25 | 25-50 | 34-70 | | |
| Middle and ring fingers..... | 20 | 33-40 | 33-40 | | |
| Ring and little fingers..... | 20 | 20-33 | 10-20 | | |
| Thumb, index, and middle fingers..... | 55 | 50-60 | 30-50 | | |
| Index, middle, and ring fingers..... | 35 | 45-60 | 40-50 | | |
| Middle, ring, and little fingers..... | 30 | 33 | 50-60 | | |
| Thumb and three fingers..... | 65 | 50-60 | 60-85 | | |
| Four fingers | 50 | | 60 | | |
| Loss of left or minor— | | | | | |
| Arm | 65 | 60 | 60-80 | 66-83 | 75 |
| Forearm | 60 | 60-75 | 60 | 66-75 | 65-75 |
| Disarticulation at shoulder..... | 75 | | | | |
| Hand | 55 | 50-60 | 50-55 | 50-83 | 65 |
| Thumb | 25 | 25 | 10-20 | 25-30 | 25 |
| Including metacarpal bone..... | 30 | | | | |
| One phalange only..... | 10 | 10 | 5-13 | | 12 |
| Index finger | 10 | 10 | 11-13 | | 15 |
| Two phalanges | 8 | 10 | 6-20 | | |
| One phalange only..... | 5 | 0-10 | 0-10 | | |
| Middle finger | 8 | 15 | 5-16 | | 8 |
| Two phalanges | 6 | 0-10 | 8-15 | | |
| One phalange only..... | 2 | 0-10 | 3-10 | 1-10 | |
| Ring finger | 8 | 0-10 | 8-10 | | |
| Two phalanges | 6 | 0-10 | 5-8 | | |
| One phalange only..... | 2 | 0-10 | 2-6 | | |
| Little finger | 6 | 0-10 | 3-10 | | |
| Two phalanges | 4 | 0-10 | 2-10 | | |
| One phalange only..... | 1 | 0 | 1-6 | 8-10 | |
| Thumb and index finger..... | 35 | | | | |
| Index and middle fingers..... | 20 | | 20-35 | | |
| Middle and ring fingers..... | 15 | | | | |
| Ring and little fingers..... | 12 | | 13 | | |
| Thumb, index, and middle fingers..... | 45 | 33 | 30-40 | | |
| Index, middle, and ring fingers..... | 25 | 45 | | | |
| Middle, ring, and little fingers..... | 20 | | 20-35 | | |
| Thumb and three fingers..... | 50 | | | | |
| Four fingers | 40 | | | | |
| Loss of thigh: | | | | | |
| Disarticulation | 85-90 | 85 | | 50-83 | 70 |
| Amputation | 70-80 | 66 | 65-80 | 66 | 60 |
| Loss of leg | 60-65 | 50-70 | 43-65 | 45-65 | 50 |
| Loss of foot..... | 45-55 | 50-60 | 60-65 | | 50 |
| Fore part of foot only..... | 20-30 | 35-50 | | | |
| Loss of great toe..... | 12-16 | 10-15 | 5-8 | 10 | 7 |
| Including metatarsal bone | 15-20 | | | | 15 |
| One phalange only..... | 4-5 | | 2-8 | | |
| Loss of other toe..... | 3-5 | 5 | 7-20 | | 5 |
| Loss of all toes | 20-25 | 20-25 | | 30 | |
| Loss of sight, one eye..... | 20-50 | 25 | 33 | | 35 |
| Loss of hearing, one ear: | | | | | |
| Partial | 8-10 | 10-40 | | | |
| Complete | 10-15 | 15-30 | 4-22 | | 10 |
| Loss of hearing, both ears: | | | | | |
| Partial | 10-15 | 20-30 | | | |
| Complete | 50 | 15-50 | | 45 | 40 |

NUMBER OF WAGE EARNERS IN THE POPULATION AND NUMBER OF PERSONS COVERED BY ACCIDENT COMPENSATION INSURANCE.

| Country. | Year of statistics. | Population | Wage earners | Persons insured. |
|---------------|---------------------|-------------|--------------|------------------|
| Austria | 1909 | 27,800,000 | 10,000,000 | 3,710,000 |
| Belgium | 1910 | 7,400,000 | 2,100,000 | |
| Denmark | 1911 | 2,800,000 | 500,000 | |
| Finland | 1909 | 3,000,000 | 500,000 | |
| France | 1911 | 40,000,000 | 10,000,000 | 4,250,000 |
| Germany | 1911 | 65,000,000 | 16,700,000 | 24,600,000 |
| Great Britain | 1911 | 45,200,000 | 14,000,000 | 13,000,000 |
| Greece | 1910 | 2,700,000 | | |
| Hungary | 1909 | 21,000,000 | 3,200,000 | 1,180,000 |
| Italy | 1911 | 34,700,000 | 10,500,000 | 1,800,000 |
| Luxemburg | 1910 | 280,000 | 55,000 | 40,000 |
| Netherlands | 1909 | 5,800,000 | 1,500,000 | 500,000 |
| Norway | 1910 | 2,400,000 | 400,000 | 380,000 |
| Roumania | 1911 | 7,070,000 | 250,000 | 180,000 |
| Russia | 1910 | 145,800,000 | 6,500,000 | 2,400,000 |
| Servia | 1910 | 2,900,000 | 56,000 | |
| Spain | 1910 | 20,000,000 | 7,000,000 | |
| Sweden | 1910 | 5,500,000 | 1,000,000 | 650,000 |
| Switzerland | 1910 | 3,800,000 | 800,000 | 700,000 |

LIFE EXPECTANCY TABLE.

| Age | Males | Age | Males |
|---------|-------|--------------------------|-------|
| 10..... | 49.99 | 56..... | 17.13 |
| 11..... | 49.32 | 57..... | 16.47 |
| 12..... | 48.64 | 58..... | 15.83 |
| 13..... | 47.95 | 59..... | 15.19 |
| 14..... | 47.26 | 60..... | 14.56 |
| 15..... | 46.57 | 61..... | 13.94 |
| 16..... | 45.88 | 62..... | 13.34 |
| 17..... | 45.18 | 63..... | 12.74 |
| 18..... | 44.48 | 64..... | 12.16 |
| 19..... | 43.78 | 65..... | 11.60 |
| 20..... | 43.07 | 66..... | 11.04 |
| 21..... | 42.30 | 67..... | 10.50 |
| 22..... | 41.65 | 68..... | 9.97 |
| 23..... | 40.93 | 69..... | 9.46 |
| 24..... | 40.21 | 70..... | 8.97 |
| 25..... | 39.49 | 71..... | 8.49 |
| 26..... | 38.77 | 72..... | 8.02 |
| 27..... | 38.04 | 73..... | 7.57 |
| 28..... | 37.31 | 74..... | 7.14 |
| 29..... | 36.58 | 75..... | 6.72 |
| 30..... | 35.85 | 76..... | 6.32 |
| 31..... | 35.12 | 77..... | 5.93 |
| 32..... | 34.38 | 78..... | 5.57 |
| 33..... | 33.65 | 79..... | 5.21 |
| 34..... | 32.91 | 80..... | 4.87 |
| 35..... | 32.17 | 81..... | 4.55 |
| 36..... | 31.43 | 82..... | 4.24 |
| 37..... | 30.70 | 83..... | 3.95 |
| 38..... | 29.96 | 84..... | 3.67 |
| 39..... | 29.22 | 85..... | 3.40 |
| 40..... | 28.48 | 86..... | 3.14 |
| 41..... | 27.75 | 87..... | 2.89 |
| 42..... | 27.01 | 88..... | 2.64 |
| 43..... | 26.28 | 89..... | 2.39 |
| 44..... | 25.55 | 90..... | 2.17 |
| 45..... | 24.82 | 91..... | 1.98 |
| 46..... | 24.09 | 92..... | 1.81 |
| 47..... | 23.38 | 93..... | 1.64 |
| 48..... | 22.66 | 94..... | 1.49 |
| 49..... | 21.95 | 95..... | 1.34 |
| 50..... | 21.24 | 96..... | 1.18 |
| 51..... | 20.54 | 97..... | 1.03 |
| 52..... | 19.84 | 98..... | .83 |
| 53..... | 19.15 | 99..... | .50 |
| 54..... | 18.47 | 100..... | 00.00 |
| 55..... | 17.80 | (30 American, Companies) | |

INDUSTRIAL ACCIDENT LEGISLATION.

HISTORIC REVIEW.

“The principle of systematic compensation for losses due to industrial accidents has been known in Europe for over a century, the earliest examples being found in the mining industries, especially in Germany and Austria. As these industries were the first to be operated on a large scale with large numbers of employees whose life and safety depended on the care and skill of the manager and of the fellow workmen, and, in addition, had a higher danger rate, it was but natural that attempts should be made to provide in a definite manner for the relief of the distress caused by accidental injuries or other physical disability of employees. The industry of navigation possessed similar characteristics and also developed at an early date comparative well-defined systems of relief for disability arising from the operations of vessels. The next industry to be operated on a large scale, an industry which had at the same time a high trade risk, was that of railway transportation, and in the states of the present German Empire we find early efforts to make provision for railway employees on a more liberal scale than that prevailing in the manufacturing industries.

“With the introduction of the factory system, the development of large-scale industries, and the more extensive use of power machinery, there was an increase in the trade risk of the industries so affected. Previous to the development of large-scale production, a system of compensation for industrial accidents prevailed in practically all countries of the world, based on the idea that a workman suffering an injury from industrial accident should be compensated by the person or persons at fault in causing the accident. The relief provided under the civil code in continental Europe was more readily obtainable than that permitted under the English common law, but

in each case the person liable was supposed to have committed some fault, and it was necessary for the plaintiff to begin suit and to prove such fault or negligence according to the rules of evidence prevailing in the courts of each country." Bulletin No. 126, of U. S. Department of Labor.

The enactment in Germany as early as in 1884 of a statute providing for compensation for injured workmen has been ascribed to the teachings of Hegel and Fichte, one of whose followers, Sismondi, after a journey through industrial centers, wrote:

"We regard the Government as having the duty of protecting the weak against the strong. I became persuaded that governments were upon the wrong road. A state may be very miserable indeed, even though a few individuals gather colossal fortunes."

Frederick the Great, "King of the Poor," had already declared in his historic message:

"It is the duty of the State to provide sustenance and support to those of its citizens who cannot provide sustenance for themselves. Work adapted to their strength and capability shall be supplied to those who lack means and opportunities of earning a livelihood for themselves and those dependent upon them."

Bismarck—originator of the "Mailed Fist" doctrine, now in evidence—had likewise announced:

"It is the duty of Humanity for the State to interest itself to a great degree in those of its members who need help. It is the duty of the State to cultivate beneficent institutions. The State should not merely discharge the duties of self-defense but those also of a positive character in promoting the welfare of all its members and especially of the weak and needy."

In accord therewith, Emperor William I, in his message of 1881, promulgated a new social era by recommending the first compensation measure.

In England, where twenty-five years of legislative effort were required to restrict the employment of children not over nine years of age to sixty-nine hours of labor a week, there had been enacted in the time of George III the first Factory Safety Act: "An Act for the preservation of the Health and Morals of Apprentices and others employed in Cotton and other Mills and Factories;" (42 Geo. III, Ch. 73) requiring yearly washings of plants with quicklime, admission of sufficient fresh air, suitable clothing; also prohibiting night work and excessive work.

The first English Workmen's Compensation Act was passed in 1897 (Stats. 60-61, Vict. Ch. 37), and the second Act in 1906 (Stats. 6 Edw. VII, Ch. 57).

The English Parliament not being at the mercy of the veto power of administrative and judicial functionaries—often arbitrary as a Turkish *Caleph*—nor in the grip of obsolete formulas and absurd dogmas of the tomb, the measure was promptly put into operation in the actual life of men.

"The justification put forward for these new laws," declared Sir J. G. Hill, "is that it is expedient in the public interest to throw the risk of accidents on the trade in which they occur, and the employer can recoup himself for the cost incurred by him by raising the price of his productions and by reducing wages."

The Statute, which had been intended as a means of lessening litigation, however, was, according to Lord Brampton, "so framed as to provoke, rather than minimize, litigation," and "bristles with obscurities." *Cooper v Wright*, 86 L. T. N. S. 776.

Following the English Statute in varying adaptations, the majority of the States of the North American Union established Workmen's Compensation Acts—Montana in 1909; New York in 1910; Illinois, California, Kansas, Massachusetts, Nevada, New Hampshire, New Jersey and Wisconsin in 1911; Arizona, Iowa, Michigan, Ohio and Rhode Island in 1912; and Minnesota in 1913.

The New York enactment having been nullified, constitutional enabling amendments were made in that State, Arizona, California, Ohio and Vermont.

The ancient law of employers' liability is a decadent system, and already the great mass of the industrial workers of this continent and entire civilized society, except farm laborers, are covered by Workmen's Compensation Acts; thirty-one American States and two territories, also Canada, Columbia and the Argentine Republic, now operating such laws. New Statutes were passed during the past year in Alaska, Colorado, Hawaii, Indiana, Maine, Montana, Oklahoma, Pennsylvania and Wyoming. Amending Acts were passed in 1915 in California, Connecticut, Illinois, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Washington, West Virginia and Wisconsin.

In the Southern States, including Alabama, Georgia, Florida, Kentucky and Virginia, similar systems of reimbursement are sought, one consideration retarding progress being in reference to negro population.

The Federal Statute, entitled "An Act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," was passed May 30, 1908. 35 U. S. Stat., p. 556.

The second Federal Employers' Liability Act, entitled "An Act relating to the liability of Common Carriers by Railroad to their Employees in certain cases," was enacted April 22, 1908, and amended April 5, 1910. (35 Stat. 65). It was upheld in "Second Liability Cases," 223 U. S. 1, (wherein the Supreme Court of the United States once and for all abrogated the doctrine of vested rights in common law rules).

* * * *

In the State of Illinois, under enactment of March 4, 1910, an Employers' Liability Commission was appointed, consisting of six representatives each of the employing

and employee classes, to investigate the problem of industrial accidents and the law of liability for injuries and death suffered in the course of industrial employment within and outside the State and to inquire into the most equitable and effectual method of providing for compensation for losses suffered and to draft a bill accordingly.

The report of the Illinois commission is an octavo volume of 249 pages, presenting a brief record of the work of the commission; a draft of a bill; a discussion of the constitutionality of a compensation law; records of cases heard before certain courts of the State; the record of the coroner of Cook County, in which the city of Chicago is situated; special studies of the coal-mining industry, railroads, manufactories, etc., from the standpoint of hazard, and showing accident records and compensation for injuries; and other statistical and economic data. The discussion as to constitutionality was made by the commission's attorney, who expressed the conviction that within a decade provision for compulsory compensation will be generally accepted as being within the police power of the State. He recommended, however, as a concession to the present state of information and public opinion, that an alternative proposition be enacted, embodying compensation as optional but not required, though so limiting rights and defenses as to lead both parties to an acceptance of the compensation provisions. "That the law should read into every contract of hiring a limited guaranty by the master to his servant against injury to life or limb while the servant is going about his master's business, when it appears that the larger proportion of such injuries in almost all employments are entirely incidental to the business, does not seem any more unreasonable than that the law should conclusively presume that the servant, upon entering the employment, voluntarily assumes in advance all the necessary and inherent hazards of the trade."

In the other industries investigated and in the report from the Illinois Manufacturers' Association, details of accidents, showing the nature of the injury and the form and amount of damages or compensation on account of it, are shown; also a comparison of the present actual cost and the estimated cost under the commission's plan.

The formulated measure, with numerous amendments, was placed upon the statute book in 1911. As it was confined to especially dangerous occupations, the second Act of 1913 was passed, extending the field of operation, and the unconstitutional provision for certiorari to the Supreme Court was remedied. The amendments of 1915 followed.

Under the operation of the law, there were reported during the first six months in 1913 to the Industrial Board 166 fatal and 9,415 non-fatal accidents, the majority of which were settled under the statutory provisions. For the year ending June 30, 1915, the Industrial Board reports approximately 5,000 claims filed, the number of amicable settlements being of course not known. In this connection there is a noted decrease of personal injury litigation and the high cost of courts and juries incident thereto, of about twenty per cent. For the same period, the State Factory Inspector reports 56,068 establishments inspected, the larger portion of the employees in such industries being affected by the Act by reason of its provisions concerning employments under statutory safety regulations.

The Industrial Board of Illinois, in its Bulletin No. 1, thus voices the spirit in which it has given expression to the Statute in its administration thereof:

"For many years there has been a growing demand in the states for a change in all laws affecting the regulation of employment and the adjustment of industrial accidents. Notwithstanding this, the old doctrine of tort was so firmly fixed in the minds of the people as to make it well nigh impossible to draft laws that would obviate

the objection to the same. The most experienced legislators, many of whom recognize the evils that come from the 'law court idea' of enforcing rights, were not able to devise or formulate corrective legislation on the subject. Many opposed any move made to correct the evils of the old doctrine. Lawyer and business man earnestly and honestly believed he was responsible only for his own wrongful acts; but great innovations in industrial activities and a constant increase in the number of injuries to workmen, have required better protection in working conditions, and more ample provision for injured workmen and their dependents. In the earlier history of industrial enterprises, most workmen did their work under the immediate direction of the employer. Little, if any, machinery was required to produce any of the articles which were the special subject of commerce or exchange. Few, if any, injuries occurred that were not chargeable directly to the employer; but, by virtue of the great increase in the population of the world, and the installment of machinery in the production of almost every product manufactured, injuries to employees have greatly increased. The fact that more than twenty-three states, (thirty-one at present), have adopted compensation laws fixing the burden upon consumption for industrial accidents argues strongly that this is the best remedy for the evils of the old system. Industry now bears the burdens of worn-out industrial machinery, and society now demands that industry also bear the burden of destruction and inefficiency in human machinery, without which there can be no stable social and industrial conditions. When a man loses his life or is injured in his employment, every rule of Humanity requires that those depending upon him in the event of his death, and he himself in the case of injury, should be properly provided for. Hence, the enactment of laws requiring payment of compensation and making the same a direct burden upon consumption.

“Those of us whose education is of the old school and who are fixed in our opinions, must get our eyes opened, get in line with the spirit of progress, remove the cobwebs from the shelf, buckle on our armor and begin the fight again. Every man’s right to live and enjoy the blessings and comforts of life no longer is a mere legal fiction, but a well grounded, formal and established right. Equal opportunity before the law really means something today. The day of high sounding phrases and generalities in legalism and legislation, is gone forever. Idle sophisms have given place to plain and comprehensive reasoning.”

* * * * *

The legal relationship of master and servant was recognized in the oldest body of laws extant—the Code of King Hammurabi of Babylon, promulgated nearly fifty centuries ago, wherein provisions were made for the rates of wages to be paid to employees of various classes.

A thousand years ago, employers were required to support their servants during sickness by the “Grey Goose,” the Code of the Northland King Magnus.

The first attempt in England on the part of a servant to hold a master liable for neglect of duty was made eighty years ago by a servant whose leg had been broken by the giving away of an overloaded butcher’s van, in which he was riding while in his master’s service, and who rashly ventured to sue his master for damages in an action on the case. A verdict for £500 being rendered, the court (Lord Abinger; Court of Exchequer) ridiculed the suggestion and arrested judgment for reasons on which the doctrine of fellow-servant has rested ever since. *Priestley v Fowler*, 3 Meeson & Welsby’s Rep. 1-1827. It was adopted by the House of Lords in *Barston & Co. v Reid*, 3 Macq. House of Lords Cases, 266.

Thereupon followed the first real decision whereby a bad exception to a bad rule was established—to the effect that while the master did not guarantee against injury

from the negligence of a fellow servant, there was nevertheless an implied agreement between them. *Murray v South Car. R. R. Co.*, 1 McMullen Rep. S. Car. 385. The rule in its present form was laid down in Massachusetts by Chief Justice Shaw in 1842 in *Farwell v Boston & Worcester R. R. Co.*, 4 Metc. Rep. 49. The doctrine culminated in 1868 in the much condemned case of *Wilson v Merry*, L. R. 1 Scotch & Div. App. 326, which abolished liability for the fault of a vice-principal.

The reaction in the drift of popular feeling resulted in the enactment by Parliament of the Employers' Liability Act of 1880 and the Workmen's Compensation Act of 1897, which was in effect a statute providing for compulsory insurance.

The chief obstacle in the inauguration of this modern system of social equity has been the juristic doctrine of tort, culminating in the *Ives* decision.

"Negligence," as defined by Baron Alderson in *Blyth v Waterworks Co.*, 11 Exch. 784, "is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a reasonable or prudent man would not do."

At common law it is the duty of an employer to use ordinary and reasonable care for the safety of the employee while performing his work:

1. By providing a reasonably safe place to work;
2. By providing reasonably safe tools and appliances;
3. By using reasonable care in hiring agents and servants, fit for the work they are to do;
4. By formulating suitable and reasonable rules for carrying on the work;
5. By warning and instructing youthful and inexperienced servants as to hazards of employment
6. By cautioning against hidden dangers.

While employment was still conducted on a limited scale, considerations for the protection of small and solitary employers led to the grafting into the law of the other two shoots of these triplet favorites of courts, contributory negligence and assumption of risks. With the revolution in modern industrial operations, these exceptions, originally intended to subserve justice, were perverted into gross and farcical injustice, in the judgment of compensation advocates.

* * * * *

In *Ives v South Buffalo Ry. Co.*, 201 N. Y. 271, where-in the New York Act was nullified, because it set the ax to the root of this ancient judicial tree, the court say:

“The new statute is totally at variance with the common law theory of the employer’s liability. Fault on his part is no longer an element of the employee’s right of action. This change necessarily and logically carries with it the abrogation of the ‘fellow servant’ doctrine, the ‘contributory negligence’ rule, and the law relating to the employee’s assumption of risks. There can be no doubt that the first two of these are subjects clearly and fully within the scope of legislative power, and that, as to the third, this power is limited to some extent by constitutional provisions.

“The ‘fellow servant’ rule is one of judicial origin, ingrafted upon the common law for the protection of the master against the consequences of negligence in which he has no part. In its early application to simple industrial conditions, it had the support of both reason and justice. By degrees it was extended until it became evident that, under the enormous expansion and indefinite complexity of our modern industrial conditions, the rule gave opportunity, in many instances, for harsh and technical defenses. In recent years it has been much restricted in its application to large corporate and industrial enterprises, and still more recently it has been

modified, and to some extent abolished, by the labor law and the Employers' Liability Act.

* * * * *

"We have said enough to show that the statutory modifications of the 'fellow servant' rule, and the law of contributory negligence are clearly within the legislative power. These doctrines, for they are nothing more, may be regulated or even abolished. * * *

"There can be no doubt as to the theory of this law. It is based upon the proposition that the inherent risks of an employment should in justice be placed upon the shoulders of the employer, who can protect himself against loss by insurance and by such an addition to the price of his wares as to cast the burden ultimately upon the consumer; that indemnity to an injured employee should be as much a charge upon the business as the cost of replacing or repairing disabled or defective machinery, appliances or tools; that under our present system, the loss falls immediately upon the employee, who is almost invariably unable to bear it, and ultimately upon the community, which is taxed for the support of the indigent; and that our present system is uncertain, unscientific, and wasteful, and fosters a spirit of antagonism between employer and employee, which it is to the interests of the State to remove. * * *

"The argument, that the risk to an employee should be borne by the employer, because it is inherent in the employment, may be economically sound; but it is at war with the legal principle that no employer can be compelled to assume a risk which is inseparable from the work of the employee, and which may exist in spite of a degree of care by the employer far greater than may be exacted by the most drastic law. * * *

"There is, of course, in this country no direct legal authority upon the subject of the liability sought to be imposed by this statute; for the theory is not merely new in our system of jurisprudence, but plainly antagonistic

to its basic idea. The English authorities are of no assistance to us, because in the King's Court the decrees of the Parliament are the supreme law of the land, although they are interesting in their disclosures of the paternalism which logically results from a universal employers' liability, based solely upon the relation of employer and employee, and not upon faults in the employer. * * *

"It is true, as stated by Mr. Justice Brown, in *Holden v Hardy*, 169 U. S. 366, 42 L. Ed. 780, 18 Sup. Ct. 383, that 'the law is, to a certain extent, a progressive science;' that, in some of the states, methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. * * * The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. * * * The power of the State to make such changes in methods of procedure and in substantive law is clearly recognized. * * * All that is necessary to affirm in the case before us is, that in our view of the Constitution of our State, the liability sought to be imposed upon the employers enumerated in the Statute before us is a taking of property without due process of law, and the STATUTE IS THEREFORE VOID."

* * * * *

"The criticisms of the policy of the decision are that it carries a constitutional principle to the 'drily logical extreme,' condemned by Mr. Justice Holmes in *Noble State Bank v Haskell*, 219 U. S. 104, 55 L. Ed. 112, 32 L.

R. A. N. S. 1062, 31 Sup. Ct. 186, and thereby converts our fundamental law into an obstacle to social justice; in other words, that it assumes that present day economic conditions and social philosophy have nothing to do with the constitutional guaranties of property, and that such guaranties must be interpreted absolutely as abstract principles until reformulated by amendment; that it gives a different interpretation to the 'due process of law' clause than is given by the Supreme Court to the similar clause in the Federal Constitution, thereby making such clause the embodiment of a variable rather than of a fixed principle; and that the court, in declaring the Statute not to be a proper exercise of the police power, has invaded the province of the legislature by constituting itself the judge of the existence of the economic and industrial facts which gave rise to the enactment. * * *

"The law of negligence is of comparatively recent origin and it does not embrace all torts. (See historical articles by Prof. Wigmore in 7 Harvard L. Rev. 315, 383, 441; 8 Harvard L. Rev. 200, 377.)

"Torts may be divided into three classes: Those for which the defendant can be held only if he committed the damaging act intentionally; (2) those for which the defendant can be held if negligent in committing the act; (3) those for which the defendant can be held where the act was not intended by him, and where he was not negligent, but which was due to an instrumentality (not necessarily human) which he employed. * * *

"Consequently, the legislature in passing the Workmen's Compensation Act, merely declared, in effect, that for physical damage done to these workmen the requisites for the recovery of damages should be those of class 3 above, instead of those of class 2. Legislation changing the requisites for recovery for a tort has often been upheld." Lawyers' Reports Annotated. Note; Vol. 34 (N. S.) 162.

Moreover, the spirit of the times demands a government—of living men, reason and justice—not of an endless mass of accumulated, contradictory and antiquated precedents, a great portion of which has by this modern legislation, been turned into debris.

However, the question is now foreclosed in the Empire State by the filing of an opinion by the Sovereign People in the ballot box. In Illinois it remains unsettled, as this universally adopted measure is here still limited by its elective feature.

* * * * *

One of the greatest difficulties in the operations of the Act has been encountered in ascertaining the nature and extent of injuries by reason of the proverbial unreliability of expert testimony of the medical profession and in limiting the fees of its practitioners within reasonable bounds. The experience of employers in New Jersey, where the amount of such fees was limited to \$100 for two weeks, in that the doctor's bill in most instances went up to the limit, led to the further limitation to \$50.

The fear of employers of exposure to extortion has forced the limitation in other states to \$25. According to the requirements of the highly specialized nature of this profession, an ordinary employer should always be prepared to provide a bonesetter, a pediatrician, an orthopedic surgeon, a throat surgeon, a neurologist, a gynecologist, an oculist, an aurist, an X-ray specialist, a Wasserman test specialist, a laboratory worker, a skin specialist, a nail specialist, a corn doctor, a dentist, a general physician and—an undertaker. By reason of the uncertainty in theories and failure in results of medicine and surgery, Congress, in enacting the Federal Compensation Statute, excluded all mention of the subject.

* * * * *

Considering the beneficent purpose of this Statute of Illinois, which can only be attained by simple and unencumbered procedure, any attempt to force upon employers or employees, practitioners or courts, in any little case that may arise, the necessity of consulting and wading through the vast and rapid accumulations of precedents in half a hundred foreign jurisdictions, with as many different kinds of Compensation Acts—each and all of the provisions of all of which are apt to vary in phraseology and meaning—would result in nothing else than rendering this enactment the very opposite of what it was intended to be—a grotesque opera bouffe—in fact the most burdensome and hopelessly encumbered piece of legislation ever placed upon a statute book.

That the courts of this State will not sanction this “*reductio ad absurdum*” is clearly evident from the following:

The Supreme Court, in *Uphoff v Industrial Board*, 271 Ill. Sup. 316, stated:

“Numerous authorities from other jurisdictions, construing Workmen’s Compensation Acts, have been cited and frequent references have been made to acts in other jurisdictions. Both counsel have cited authorities which, it is argued, support the conclusions contended for. The wording of our Statute is so different on the question here under consideration that the other acts or decisions could have very little weight as to the proper construction to be here given, and *further reference to them is unnecessary.*”

The Supreme Court further said, in *Staley v Ill. Cent. R. R.*:

“The provisions of the acts of the states having adopted legislation of this character on the questions here under consideration are very dissimilar and we have been *unable to find much help from adjudicated cases in other jurisdictions.*”

* * * * *

In approaching the "Dixi" of this little labor, attention is invited to the curious fact that near the very cradle of the Anglo-Saxon race, among the Viking sons of the Northland, there was a thousand years ago in general operation—as a substitute for blood vengeance of kin or outlawry—a system of jurisprudence formulated on the principle of definite compensation for every loss, including that of life by wilful slaying.

Here is a graphic picture of those days of real popular government, when the yeomen from near and far gathered at the "Folcmote" or "Thing" and, after listening to the recital of the Law-saga, sat in legislative, judicial and administrative session regarding their own daily affairs.

It is a brief extract from Njals Saga, chronicled in the 1100's. ("Sources of Ancient and Primitive Law," Continental Legal History Series, Professor John H. Wigmore.)

*"The sons of Sigfus gave notice of their suit at the Hill of Laws, and asked in what Quarter Courts they lay, and in what house in the district the defendant dwelt. * * Many sought to bring an atonement between them, but Flosi was steadfast; yet others were still more wordy, and things looked ill.*

"Then the whole body of men at the Thing went to the courts. Flosi stood south at the court of the men of Rangriver, and his band with him. There with him was Hall of the Side, and Runolf of the Dale, Wolf, Aupriest's son, and those other men who had promised Flosi help.

"Njal had already prayed the judges to go into the court, and now the sons of Sigfus plead their suit. They took witness and bade Njal's son listen to their oath; after that they took their oath; and then they declared their suit; then they brought forward witness of the notice; then they bade the neighbors on the inquest to take

their seats; then they called on Njal's son to challenge the inquest. Then up stood Thorhall, Asgrim's son, and took witness and forbade the inquest by a protest to utter their finding.

" 'Mord, Valgard's son,' said Thorhall, 'fared to Hauskuld's slaying with Njal's sons, and wounded him with that wound for which no man was named when witness was taken to the death wounds; and ye can say nothing gainst this, and so the suit comes to naught.'

*"Then Njal stood up and said: 'It seems to me as though this suit were come to naught, and it is likely it should, for it hath sprung from an ill root. I will let you all know that I loved Hauskuld more than my own sons, and when I heard that he was slain, methought the sweetest light of my eyes was quenched, and I would rather have lost all my sons, and that he were alive. Now I ask thee, Hall of the Side, and thee, Runolf of the Dale, and thee, Hjalhti, Skeggi's son, and thee, Einar of Thvera, and thee, Hafr the Wise, that I may be allowed to make an atonement for the slaying of Hauskuld on my son's behalf; and I wish that those men who are best fitted to do so shall utter the award.' * * **

"So the bell was rung, and all men went to the Hill of Laws, and Hall of the Side stood up and spoke, 'In this suit, in which we have come to an award, we have all been well agreed; and we have awarded six hundred in silver, and half this sum we, the daysmen, will pay, but it must all be paid up here at the Thing. Now each must give the other pledges of peace.' "

WORKMEN'S COMPENSATION ACTS.

Publications.

United States Department of Labor—Bureau of Statistics—
"Workmen's Compensation Laws of the United States and Foreign
Countries," 1913; No. 126.

"Compensation Legislation of 1914 and 1915," 1915; No. 185.

"Compensation for Accidents to Employees of the United States,"
under Act of May 30, 1914; No. 155.

"Decisions of Courts Affecting Labor Bills;" Nos. 169, 152.

"Report of the Employers' Liability Commission of the State of
Illinois;" 1910-1913.

"Report of Employers' Liability and Workmen's Compensation
Commission;" U. S. Senate Doc. No. 338; 62nd Congress; 2nd Sess.

Chief State Factory Inspector, "Annual Report," 1915.

Workmen's Insurance and Benefit Funds in U. S. Dept. Com.
and Lab., Rep. 1909.

Workmen's Insurance and Compensation Systems in Europe. U.
S. Com. of Labor, 1911.

Legal Liability for Injuries to Employees. U. S. Bur. Lab., Bul.
74.

Illinois Employers' Liability Commission; Report Initial Meeting,
March 27, 1910, Final Meeting Sept. 15, 1910.

Workmen's Compensation for Industrial Accidents, Proceedings
of National Conference.

Industrial Board of Illinois; "Bulletin No. 1." (Containing deci-
sions to July, 1915.) Annual report; 1915.

"Proceedings of Commission on Compensation for Industrial Acci-
dents," Chicago; Amos T. Saunders, Sec'y, Clinton, Mass.

"The Law of Compensation for Injuries to Workmen." James
Harrington Boyd; Bobbs-Merrill Co., Indianapolis.

"Workmen's Insurance in Europe;" Frankel & Dawson.

"Industrial Insurance in the United States;" Prof. Charles R.
Henderson.

"Economic Value of Man;" Chauncey Rea Burr, U. S. Senate
Doc. No. 965; Gov't Printing Office.

"Workmen's Compensation Acts," Treaties by Mr. Beren, Mr.
Minton Senhouse and Messrs Parsons & Bertram. (London.)

Butterworth's "Workmen's Compensation Cases." Vols. I-IX;
New Series: 1—London.

"Workmen's Compensation Appeals;" C. Y. C. Dawbarn, London.

"Workmen's Compensation; Judicial Interpretations." John
Charters, London.

"Workmen's Compensation Acts and Cases." Canada. Edgar T.
Dale.

"Master and Servant;" C. B. Labatt; Vol. 5 (contains Acts of
States).

"Negligence and Compensation Cases, Ann." Callaghan & Co.,
Chicago.

"Workmen's Compensation Act," 1914. Samuel A. Harper.

STATE OF ILLINOIS

STATUTES

Regulating

EMPLOYMENTS

Related to Workmen's Compensation Act; Enforced by
State Factory Inspector.

| | |
|--|-----|
| Safety Act | 335 |
| Structural Act | 354 |
| Occupational Disease Act | 361 |
| Blower Act | 368 |
| Noxious Fumes Act..... | 371 |
| Garment Manufacture Act..... | 373 |
| Butterine and Ice Cream Manufacture Act..... | 375 |
| Hours of Service of Women Act..... | 377 |
| Child Labor Act | 379 |
| Wash Room Act | 389 |
| Miscellaneous Acts | 391 |

SAFETY ACT.

See Workmen's Compensation Act, § 3, par. 8.

- | | |
|---|---|
| <p>§ 1. Hazardous machinery to be located so as not to be dangerous — dangerous places to be properly enclosed—no machine to be used when defective—no repairs while machine in motion.</p> <p>§ 2. Safeguards not to be removed, except for repairs.</p> <p>§ 3. Means to be provided for disconnecting power.</p> <p>§ 4. Hoistways, etc., to be enclosed — safety devices — device to hold elevator cab or cars in event of accident.</p> <p>§ 5. Notice of unsafe condition—to remedy—by chief factory inspector.</p> <p>§ 6. Employe not to operate or tamper with machine with which he is unfamiliar.</p> <p>§ 7. Traversing carriage of self-acting machine must be located at what distance.</p> <p>§ 8. Food not to be taken where poisonous substances, etc., are present as result of process of manufacture.</p> <p>§ 9. Requirements as to seats for female employees.</p> <p>§ 10. Equitable temperature to be maintained.</p> | <p>§ 16. Hand-rails. Stair-ways—how constructed.</p> <p>§ 17. Proper light in all main stairways, etc. Where and when necessary.</p> <p>§ 18. Floor space not to be overloaded, etc.</p> <p>§ 19. Passageways must be of ample width, etc.</p> <p>§ 20. Requirements as to water closets — number — location—ventilation.</p> <p>§ 21. Washing facilities—dressing rooms.</p> <p>§ 22. Employer to make changes and additions—owner to permit alterations.</p> <p>§ 23. Alterations and additions—time after notice by chief factory inspector.</p> <p>§ 24. Report as to accidents resulting in death—as to accidents entailing loss of 15 days' time—what report to state.</p> <p>§ 25. Chief factory inspector and assistants to enforce act—notice of violations—when changes made complying with act not to be disturbed for a year.</p> <p>§ 26. Penalty.</p> |
|---|---|

- | | |
|--|---|
| <p>§ 11. Air space required—when artificial means of ventilation required—terms defined.</p> <p>§ 12. Factories to be kept free from gas from sewer, etc.—poisonous fumes, dust, etc., arising from any process to be removed by ventilating and exhaust device.</p> <p>§ 13. Refuse, waste, and sweepings removed once each day—cleaning—where floors are wet.</p> <p>§ 14. Means of egress—fire escapes.</p> <p>§ 15. Outside doors to open outward—doors—how constructed.</p> | <p>§ 27. Where inspection of a standard equal to that of this act is required by ordinances of city, etc.</p> <p>§ 28. Act not to apply where federal government exercises jurisdiction.</p> <p>§ 29. Terms defined.</p> <p>§ 30. Act to be printed in English and other languages.</p> <p>§ 31. Notice covering salient features of Act—to be posted in office and work-rooms.</p> <p>§ 32. In force—repeal.</p> |
|--|---|

SAFETY ACT.

AN ACT to provide for the health, safety and comfort of employees in factories, mercantile establishments, mills and workshops of this State, and to provide for the enforcement thereof, and to repeal an Act entitled, "An Act to provide for the health, safety and comfort of employees in factories, mercantile establishments, mills and workshops in this State, and to provide for the enforcement thereof." Approved, June 29, 1915; in force, July 1, 1915. Laws 1915, p. 18, House Bill No. 713.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That all power driven machinery, including all saws, planers, wood shapers, jointers, sand paper machines, iron mangles, emery wheels, ovens, furnaces, forges and rollers of metal; all projecting set screws on moving parts; all drums, cogs, gearing, belting, shafting, tables, fly wheels,

flying shuttles, and hydro-extractors; all laundry machinery, mill gearing and machinery of every description; all systems of electrical wiring or transmission; all dynamos and other electrical apparatus and appliances; all vats or pans, and all receptacles containing molten metal or hot or corrosive fluids in any factory, mercantile establishment, mill or workshop, shall be so located wherever possible, as not to be dangerous to employees or shall be properly enclosed, fenced or otherwise protected. All dangerous places in or about mercantile establishments, factories, mills or workshops, near to which any employee is obliged to pass, or to be employed shall, where practicable, be properly enclosed, fenced or otherwise guarded. No machine in any factory, mercantile establishment, mill or workshop, shall be used when the same is known to be dangerously defective, and no repairs shall be made to the active mechanism or operative part of any machine when the machine is in motion.

§ 2. **Removing and replacing Safeguards.**—No person shall remove or make ineffective any safeguard required by this act, during the active use or operation of the guarded machine or device, except for the purpose of immediately making repairs thereto, and all such safeguards so removed shall be promptly replaced.

§ 3. **Disconnecting Power.**—In every factory, mercantile establishment, mill or workshop, effective means shall be provided for immediately disconnecting the power, so that in case of need or accident any particular machine, group of machines, room or department, can be promptly and effectively shut down.

a. Where machines require to be started and stopped frequently, they shall, wherever practicable, be provided with tight and loose pulleys, clutch or other effective disengaging device. When provided with tight and loose pulleys, the shifting of the belt shall be accomplished by the use of a belt shifter, placed within easy reach of the operator. When a clutch or other disengaging device is used,

an effective means for throwing such device into or out of engagement shall be provided, and shall be placed within easy reach of the operator.

b. Where machines are direct connected with the prime mover (electric motor, steam, gas or gasoline engine, or other source of power), a switch, throttle, or other power controlling device shall be furnished and shall be placed within easy reach of the operator, or his co-worker.

c. Where machines are arranged in groups, rooms or departments, and power is supplied by a prime mover, located within the confines of such group, room or department, a switch, throttle, or other power-controlling device shall be furnished, and shall be placed within easy reach of the operators affected, so that all shafting, transmitting machinery and machines of such group, room or department, can be simultaneously shut down.

d. Where machines are arranged in groups, rooms or departments, and are supplied by power through the use of main or line shafts, receiving power from some prime mover, located without the group, room or department, the power-receiving wheel of such main or line shaft, shall, wherever possible, be provided with a friction clutch, or other effective power-disengaging device, with suitable means for operating the clutch, or power-disengaging device, and these means shall be placed within the confines of such group, room or department, and within easy reach of the employees or operatives affected, so that all machines, shafting and other transmission machinery within such group, room or department, can be simultaneously shut down. In addition to such safeguard, communication consisting of speaking tubes, electric bells, electric colored lights, or other approved and effective means, shall be provided in all cases covered by this paragraph between each such group, room or department, and the room in which the engineer, or prime mover, is located, so that in case of need or accident, the

motive power of such group, room or department can be promptly stopped or controlled.

§ 4. **Hoistways, Elevator Wells, Wheel Holes—Safety Devices.**—All hoistways, hatchways, elevator wells and wheel holes in factories, mercantile establishments, mill or workshops, shall be securely fenced, enclosed or otherwise safely protected, and due diligence shall be used to keep all such means of protection closed, except when it is necessary to have the same open, in order that said hatchways, elevators or hoisting apparatus may be used. All elevator cabs or cars, whether used for freight or passengers, shall be provided with some device, whereby the car or cab may be held in the event of accident to the shipper rope or hoisting machinery or controlling apparatus.

§ 5. **Unsafe Conditions—Notice—to Remedy.**—If any elevator, machine, electrical apparatus or system of wiring, or any part or parts thereof, in any factory, mercantile establishment, mill or workshop, are in an unsafe condition, or are not properly guarded, where reasonable to guard the same, the owner or lessee, or his agent, superintendent or other person in charge thereof, shall, upon notice from the Chief State Factory Inspector, or the Assistant Chief State Factory Inspector, remedy such unsafe condition within a reasonable time after receiving such notice.

§ 6. **Tampering with Machine or Appliance.**—No employee of any factory, mercantile establishment, mill or workshop, shall operate or tamper with any machine or appliance with which such employee is not familiar and which is in no way connected with the regular and reasonably necessary duties of his employment, unless it be by and with the direct or reasonably implied command, request, or direction of the master or representative or agent.

§ 7. **Traversing Carriage—Space Limited.**—The traversing carriage of any self-acting machine must not

be allowed to run out within a distance of eighteen (18) inches from any fixed structure, not being part of the machine, if the space over which it runs out is a space through which any employee is liable to pass, whether in the course of his employment or otherwise.

§ 8. **Food Prohibited in Certain Rooms, etc.**—No employee shall take or be allowed to take food into any room or apartment in any factory, mercantile establishment, mill or workshop, where white lead, arsenic or other poisonous substances or injurious or noxious fumes, dusts or gases under harmful conditions are present, as the result of the business conducted by such factories, mercantile establishments, mills or workshops, and notice to this effect shall be posted in each room or apartment. Employees shall not remain in any such room or apartment during the time allowed for meals, and suitable provision shall be made and maintained by the employer, when practicable, for enabling the employees to take their meals elsewhere in such establishment: Provided, however, that this section shall not apply to such employees whose presence during the meal hours may be necessary for the proper conduct of such business.

§ 9. **Seats for Female Employees.**—That every person, firm or corporation employing females in any factory, mercantile establishment, mill or workshop in this State, shall provide a reasonable number of suitable seats for the use of such female employees, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed, and shall permit the use of such seats at all times when such use would not actually and necessarily interfere with the proper discharge of the duties of such employees and, where practicable, such seats shall be made a permanent fixture and may be so constructed or adjusted that when said seats are not in use they will not obstruct such female employee, when engaged in the performance of her duties.

§ 10. **Equable Temperature.**—In every factory, mercantile establishment, mill or workshop, where one or more persons are employed, adequate measures shall be taken for securing and maintaining a reasonable, and as far as possible, equable temperature, consistent with the reasonable requirements of the manufacturing process. No unnecessary humidity which would jeopardize the health of employees shall be permitted.

§ 11. **Air Space—Temperature—Ventilation Terms Interpreted.**—In every room or apartment of any factory, mercantile establishment, mill or workshop, where one or more persons are employed, at least 500 cubic feet of air space shall be provided for each and every person employed therein, and fresh air, to the amount specified in this act, shall be supplied in such a manner as not to create injurious drafts, nor cause the temperature of any such room or apartment to fall materially below the average temperature maintained: Provided, where lights are used which do not consume oxygen, 250 cubic feet of air space shall be deemed sufficient. All rooms or apartments of any factory, mercantile establishment, mill or workshop, having at least 2,000 cubic feet of air space for each and every person employed in each room or apartment, and having outside windows and doors whose area is at least one-eighth of the total floor area, shall not be required to have artificial means of ventilation; but all such rooms or apartments shall be properly aired before beginning work for the day and during the meal hours. All such rooms, or apartments, having less than 2,000 cubic feet of air space, but more than 500 cubic feet of air space, for each and every person employed therein, and which have outside windows, and doors whose area is at least one-eighth of the floor area, shall be provided with artificial means of ventilation, which shall be in operation when the outside temperature requires the windows to be kept closed, and which shall supply during each working hour at least 1,500 cubic feet of fresh air

for each and every person employed therein. All such rooms or apartments, having less than 500 cubic feet of air space for each and every person employed therein, all rooms or apartment having no outside windows or doors, and all rooms or apartments having less than 2,000 cubic feet of air space for each and every person employed therein, and in which the outside window and door area is less than one-eighth of the floor area, shall be provided with artificial means of ventilation, which will supply during each working hour throughout the year, at least 1,800 cubic feet of fresh air for each and every person employed therein; Provided, that the provisions of the preceding portions of this section shall not apply to storage rooms or vaults: And, provided, further, that the preceding portions of this section shall not apply to those rooms or apartments in which manufacturing processes are carried on which from their peculiar nature would be materially interfered with by the provisions of this section. No part of the fresh air supply required by this section shall be taken from any cellar or basement.

The following terms of this section shall be interpreted to mean: The air space available for each person is the total interior volume of a room, expressed in cubic feet, without any deduction for machinery contained therein, divided by the average number of persons employed therein.

Outside windows and doors are those connecting directly with the outside air; the window and door area is the total area of the windows and doors of all outside openings; and the floor area is the total floor area of each room.

§ 12. **Ventilating and Exhaust Devices.**—All factories, mercantile establishments, mills or workshops shall be kept free from gas or effluvia arising from any sewer, drain, privy or other nuisance on the premises. All poisonous or noxious fumes or gases arising from any process, and all dust of a character injurious to the health

of the persons employed, which is created in the course of a manufacturing process, within such factory, mill or workshop, shall be removed, as far as practicable, by either ventilating or exhaust devices.

§ 13. **Disposition of Refuse—Drainage.**—All decomposed, fetid or putrescent matter, and all refuse, waste and sweepings of any factory, mercantile establishment, mill or workshop, shall be removed and disposed of, at least once each day, and in such a manner as not to cause a nuisance; and all cleaning shall be done, as far as possible, outside of working hours; but if done during working hours, shall be done in such a manner as to avoid the unnecessary raising of dust or noxious odors. In every employees, and gratings or dry standing rooms shall be factory, mill or workshop, in which any process is carried on which makes the floors wet, the floor shall be constructed and maintained with due regard to the health of provided, if practicable, at points where employees are regularly stationed, and adequate means shall be provided for drainage, and for preventing seepage or leakage to the floors below.

§ 14. **Means of Egress.**—In all factories, mercantile establishments, mills or workshops, sufficient and reasonable means of escape in case of fire shall be provided, by more than one means of egress, and such means of escape shall at all times be kept free from any obstruction and shall be kept in good repair and ready for use, and shall be plainly marked as such.

§ 15. **Doors—Construction.**—All doors used by employees as entrances to or exits from any factory, mercantile establishment, mill or workshop, of a height of two stories or over, shall open outward, slide or roll, and shall be so constructed as to be easily and immediately opened from within in case of fire or other emergency.

§ 16. **Stair-ways—Construction.**—Proper and substantial hand rails shall be provided on all stair-ways in factories, mercantile establishments, mills or workshops,

and the treads on all stair-ways shall be so constructed as to furnish a firm and safe foothold.

§ 17. **Lights—Where and When Necessary.**—In all factories, mercantile establishments, mills or workshops, a proper light shall be kept burning by the owner or lessee in all main passageways, main hallways, at all main stairs, main stair landings and shafts, and in front of all passenger or freight elevators, upon the entrance floors and upon the other floors, on every work day of the year, from the time that the building is opened for use until the time when it is closed, except at times when the influx of natural light shall make artificial light unnecessary: Provided, that when two or more tenants occupy different floors in one building, such elevator shafts need be lighted only on the floors occupied and used by employees.

§ 18. **Overloaded Floor Space.**—No floor space or any work room in any factory, mercantile establishment, mill or workshop, shall be so overloaded with machinery or other material as thereby to cause serious risk to or endanger the life or limb of any employee, nor shall there be permitted in any such establishment a load in excess of the safe sustaining power of the floors and walls thereof.

§ 19. **Passageways.**—In all factories, mercantile establishments, mills or workshops, machines must not be placed so closely together as to be a serious menace to those that have to pass between them. Passageways must be of ample width and head room and must be kept well lighted and free from obstructions.

§ 20. **Water Closets—Number—Location—Ventilation.**—Every factory, mercantile establishment, mill or workshop, shall be provided with a sufficient number of water closets, earth closets or privies, within reasonable access of the persons employed therein, and such water closets, earth closets or privies shall be supplied in the proportion of at least one (1) to every thirty (30) male

persons and one (1) to every twenty-five (25) female persons; and whenever both male and female persons are employed, said water closets and privies shall be provided separate and apart for the use of each sex, and plainly marked by which sex they are to be used; and no person or persons shall be allowed to use the closets or privies assigned to the opposite sex; and such water closets or privies shall be constructed in an approved manner and properly enclosed, and at all times kept in a clean and sanitary condition. The closets or privies, where practicable, shall be located so that they shall have direct ventilation with the outside air; where it is impracticable to locate the closets or privies so as to have direct ventilation with the outside air, they shall be placed in an enclosure, and every such closet or privy shall be properly and effectively disinfected and separately ventilated, and shall be properly lighted by artificial light, except when the influx of natural light makes artificial light unnecessary:

Provided, that nothing in this section shall be construed to prevent any city, town or village, by appropriate ordinance or regulation, from prohibiting the construction, use or maintenance in such city, town or village, of any kind of earth closets, or privies, which may be considered a nuisance or detrimental to the public health.

§ 21. **Washing Facilities—Dress Rooms.**—In all factories, mercantile establishments, mills or workshops, adequate washing facilities shall be provided for the employees, where necessary, and in such case in all factories, mills and workshops not less than one spigot, basin or receptacle shall be provided for each thirty (30) employees; and in mercantile establishments, not less than one spigot, basin or receptacle shall be provided for each fifty (50) employees. Where the labor performed by the employees is of such a character as to make customary or necessary a change of clothing by the employees, there shall be pro-

vided sanitary and suitable dressing room or rooms, and both such dressing rooms and washing facilities shall be separately maintained for each sex:

Provided, that nothing in this act shall be construed as abrogating or repealing any provision of section 5 of an act entitled, "An act to provide for the licensing of plumbers, and to supervise and inspect plumbing," approved June 10, 1897, and in force July 1, 1897; or the provisions of any local ordinance or regulation of any city, town or village, requiring approved and sufficient methods of sanitation, light, heat, drainage or ventilation of an equal or superior standard to that required in this act.

§ 22. **Duties of Proprietor.**—It shall be the duty of every person, firm or corporation to which the provisions of this act may apply, to carry out the same, and make all the changes and additions necessary therefor, and in every way to comply with all the provisions of this act, and it shall be the duty of the owner of the building in which is located any such factory, mercantile establishment, mill or workshop, to permit any alterations or additions to such building as may be necessary to comply with the provisions of this act.

§ 23. **Alterations and Additions—Notice by State Factory Inspector.**—Whenever, by the provisions of this act, it is made the duty of any person, firm or corporation within this State, to make or install any alterations, additions or changes, the same shall be made and installed in conformity with the provisions of this act, and completed within a reasonable time after notification by the Chief State Factory Inspector or his deputy.

§ 24. **Report of Accidents and Injuries.**—It shall be the duty of the owner or lessee, or superintendent or person in charge of any factory, mercantile establishment, mill or workshop in this State, to send to the Chief State Factory Inspector, in writing, an immediate report of all accidents or injuries resulting in death. It shall also be

the duty of the person in charge of such factory, mercantile establishment, mill or workshop, to report between the 15th and 25th of each month, all accidents or injuries occurring during the previous calendar month, which entailed a loss to the person injured of fifteen (15) consecutive days' time or more. All reports shall state the cause and character of the injury, character of employment and the age and sex of the person injured. No statement contained in any such report shall be admissible in evidence in any action arising out of the death or accident therein reported:

Provided, that any such employer who shall make the reports of accidents, required by this act, shall not be required to make such reports to any other State officer, board or commission.

§ 25. **Duties of Factory Inspector.**—It shall be the duty of the Chief State Factory Inspector, and of the Assistant Chief State Factory Inspector, and deputy factory inspectors, under the direction and supervision of the Chief State Factory Inspector, to enforce the provisions of this act, and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in this State, and for that purpose they and each of them are hereby empowered to visit and inspect, at all reasonable times, all such factories, mercantile establishments, mills and workshops in this State: Provided, that whenever any secret process is used in any factory, mercantile establishment, mill or workshop the owner shall, whenever asked by the Chief State Factory Inspector or the Assistant Chief State Factory Inspector, file with him an affidavit that the owner has in all respects complied with the provisions of this act, and such affidavit shall be accepted in lieu of inspection of any room or apartment in which any such secret process is carried on.

In the enforcement of the provisions of this act the Chief State Factory Inspector, and the Assistant Chief State Factory Inspector, and the deputy factory inspec-

tor, under the direction and supervision of the Chief State Factory Inspector, shall give proper notice in regard to any violation of this act to the persons owning, operating or managing any such factory, mercantile establishment, mill or workshop. Such notice shall be written or printed and signed officially by the Chief State Factory Inspector, or the Assistant Chief State Factory Inspector, and said notice may be served by delivering the same to the person upon whom service is to be had, or by leaving at his usual place of abode, or business, an exact copy thereof, or by sending a copy thereof to such person by mail.

When general changes relative to the location and spacing of machinery or to ventilation have been made and such changes comply with the provisions of this act, such arrangements, conditions remaining the same, shall not be disturbed by any requirement of the Chief State Factory Inspector or his deputies within the period of twelve (12) months.

§ 26. **Penalties.**—Any person, firm or corporation, who shall, or any agent, manager or superintendent of any person, firm or corporation, who, for himself, or for such person, firm or corporation, shall violate any of the provisions of this act, or who omits or fails to comply with any of the foregoing requirements of this act, or who disregards any notice of the Chief State Factory Inspector, or of the Assistant Chief State Factory Inspector, when said notice is given in accordance with the provisions of this act; or who obstructs or interferes with any examination or investigation being made by a State Factory Inspector, under this act, or any employee in any such factory, mercantile establishment, mill or workshop, who shall remove or interfere with any guard or protective or sanitary device, required by the provisions of this act, except as hereinbefore provided, or who shall violate any of the other provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall

be punished for the first offense by a fine of not less than ten dollars (\$10.00) nor more than fifty [dollars] (\$50.00); and upon conviction of the second or subsequent offense, shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), and in each case shall stand committed until such fine and costs are paid unless otherwise discharged by due process of law.

§ 27. **Municipal Inspection.**—Whenever any inspection of machinery, ways, means, instruments or appliances in, on, about or connected with any factory, mill, mercantile establishment or workshop is required to be made by the ordinances of any city, town or village of a standard equal to that of this act and the inspection required by such ordinances has been made, then and in every such case such inspection shall be accepted by the Chief State Factory Inspector, Assistant Chief State Factory Inspector and the deputy factory inspectors as a compliance in that respect with the provisions of this act; and it shall be the duty of the person for whom such inspection has been made to furnish the Chief State Factory Inspector, or his assistant or deputies, with a copy of the report of inspection made under such ordinances.

§ 28. **Establishments Operated by Federal Government Exempted.**—The provisions of this act relating to sanitation and ventilation shall not be held to apply to such rooms or apartments of any factory, mercantile establishment, mill or workshop, which are being operated under the supervision of the federal government, by virtue of an act of Congress entitled “An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and seven,” approved June 30, 1906, or any amendment thereof; nor shall any other of the provisions of this act so apply respecting matters and conditions over which the federal government now exercises or shall hereafter exercise jurisdiction.

§ 29. **Terms Defined.**—The following terms used in this act shall have the following meaning: The term “factory” means any premises wherein electricity, steam, water or other mechanical power is used to move or work any machinery employed in preparing, manufacturing or finishing, or any process incident to the manufacturing of any article or part of any article; or the altering, repairing, ornamenting or the adapting for sale of any article. The term “mill or workshop” shall include any premises, room or apartment not being a factory as above defined, wherein any labor is exercised by way of trade or for the purpose of gain in or incidental to any process of making, altering, preparing, cleaning, repairing, ornamenting, finishing or adapting for sale any article or part of any article, and to which or over which building, premises, room or apartment, the employer of the person employed or working therein has the right of access or control: Provided, however, that a private house or private room in which manual or other labor is performed by a family dwelling therein, or by any of them for the exclusive use of the members of such family is not a factory, mill or workshop, within this definition. The term “mercantile establishment” shall include all concerns or places where goods, wares or merchandise are purchased or sold, either at wholesale or retail.

§ 30. **Printed Copies of Act.**—Copies of this act shall be printed in English and such other languages as may be necessary to disseminate a general knowledge of the provisions herein set forth and shall be supplied by the Chief State Factory Inspector on application.

§ 31. **Notice Covering Salient Features of Act.**—For the purpose of disseminating a general knowledge of the provisions of this act among employees, the Chief State Factory Inspector shall have prepared a notice covering the salient features of this act, which may be in the following form:

Notice to Owners and Employees of Mercantile Establishments, Factories, Mills and Workshops.

This notice must be posted in a conspicuous place in every office and workroom of this establishment. The object of this notice is to promote the health, comfort and safety of employees, and requires their attention and co-operation.

1. All machinery when in operation is dangerous, and should be considered so by the operator. It should be so protected as to offer the least possible chance for injury to those who operate it.

2. All machinery must be daily inspected by the operator, and upon discovery of any defects, notice of the same shall be given at once to anyone in authority, and the machine not used until repaired.

3. All set screws or other dangerous projections on revolving machinery shall be countersunk or otherwise guarded when possible.

4. Means shall be provided and placed within convenient reach for promptly stopping any machine, group of machines, shafting or other power-transmitting machinery.

5. Machines must not be placed so closely together as to be a serious menace to those who have to pass between them. Passageways must be of ample width and head room, and must be kept well lighted and free from obstructions.

6. All hatchways, elevator wells or other openings in floors shall be properly enclosed or guarded.

7. The premises must be kept in a clean and sanitary condition.

8. Ample and separate toilet facilities for each sex shall be provided, and toilet rooms must be kept clean, well ventilated and well lighted.

9. Food must not be taken into any work room where white lead, arsenic or other poisonous substances or gases are present under harmful conditions.

10. Proper and sufficient means of escape, in case of fire, shall be provided, and shall be kept free from obstructions.

11. Poisonous and noxious fumes or gases, and dust injurious to health, arising from any process, shall be removed as far as practicable.

12. All employees are strictly prohibited from attempting to operate, experiment or tamper with machines or appliances with which they are not familiar and which are in no way connected with their regular duties. All employees are prohibited from jumping on or off moving cars, elevators, machines or appliances not under their immediate charge or control. All employees are prohibited from carrying to their place of work acids, chemicals or explosives of any kind which are liable to endanger life or property.

13. Reports must be sent to the office of the State Factory Inspector, as provided by law, and immediate notice of the death of any employee resulting from accident or injuries must be sent to the same office.

The notice shall be printed on card board of suitable character, and the type used shall be such as to make it easily legible. In addition to English, this notice shall be printed in such other languages as may be necessary to make it intelligible to employees. Copies shall be supplied by the Chief State Factory Inspector on application, and must be posted in a conspicuous place in every office and work room of every establishment covered by the provisions of this act.

§ 32. "An Act to provide for the health, safety and comfort of employees in factories, mercantile establishments, mills and workshops in this State, and to provide for the enforcement thereof," approved June 4, 1909, enforced January 1, 1910, be and the same is hereby repealed.

As to effect of this Act in conjunction with provisions in § 3, par. 8 of Workmen's Compensation Act, see "Opinions in Illinois Cases" and "Digest," ante, and consult Index, post. See, also—

Streeter v Western Wheeled Scraper Co., 254 Ill. Sup. 244.

Nosil v Ellis Stamp Co., 192 Ill. App. 538.

Wilson v Railway Spring Co., 165 Ill. App. 344.

Circular saw—evidence of practical guards being on market, competent.

Forrest v Roper Furn. Co., 187 Ill. App. 504.

STRUCTURAL ACT.

AN ACT providing for the protection and safety of persons in and about the construction, repairing, alteration, or removal of buildings, bridges, viaducts, and other structures, and to provide for the enforcement thereof.

Approved June 3, 1907, in force July 1, 1907. Rev. Stat. 1912, Ch. 48-79.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all scaffolds, hoists, cranes, stays, ladders, supports, or other mechanical contrivances, erected or constructed by any person, firm or corporation, in this State, for the use in the erection, repairing, alteration, removal or painting of any house, building, bridge, viaduct, or other structure, shall be erected and constructed in a safe, suitable and proper manner, and shall be so erected and constructed, placed and operated, as to give proper and adequate protection to the life and limb of any person or persons employed or engaged thereon, or passing under or by the same, and in such manner as to prevent the falling of any material that may be used or deposited thereon.

Scaffolding, or staging, swung or suspended from an overhead support, more than twenty (20) feet from the ground or floor, shall have, where practicable, a safety rail properly bolted, secured and braced, rising at least thirty-four (34) inches above the floor, or main portion of such scaffolding or staging, and extending along the entire length of the outside and ends thereof, and properly attached thereto, and such scaffolding or staging shall be so fastened as to prevent the same from swaying from the building or structure.

§ 2. If in any house, building or structure in process of erection or construction in this State (except a private house, used exclusively as a private residence), the distance between the enclosing walls is more than twenty-four (24) feet, in the clear, there shall be built,

kept and maintained, proper intermediate supports for the joists, which supports shall be either brick walls, or iron or steel columns, beams, trussels [trusses] or girders, and the floors in all such houses, buildings or structures, in process of erection and construction, shall be designed and constructed in such manner as to be capable of bearing in all their parts, in addition to the weight of the floor construction, partitions and permanent fixtures and mechanisms that may be set upon the same, a live load of fifty (50) pounds for every square foot of surface in such floors, and it is hereby made the duty of the owner, lessee, builder or contractor or subcontractor of such house, building or structure, or the superintendent or agent of either, to see that all provisions of this section are complied with.

§ 3. It shall be the duty of the owner of every house, building or structure (except a private house, used exclusively as a private residence) now under construction, or hereafter to be constructed, to affix and display conspicuously, on each floor, of such building, during construction, a placard, stating the load per square floor [foot] of floor surface, which may with safety be applied to that particular floor, during such construction; or if the strength of different parts of any floor varies, then there shall be such placards for each varying part of such floor. It shall be unlawful to load any such floors or any part thereof, to a greater extent, than the load indicated on such placards, and all such placards shall be verified and approved by the State Factory Inspector, a deputy factory inspector, or by the local commissioner or inspector of buildings or other proper authority, in the city, town or village charged with the enforcement of building laws.

§ 4. Whenever it shall come to the notice of the State Factory Inspector, or the local authority in any city, town or village in this State, charged with the duty of enforcing the building laws, that the scaffolding or the

slings, hangers, blocks, pulleys, stays, braces, ladders, irons or ropes of any swinging or stationary scaffolding, platform or other similar device used in the construction, alteration, repairing, removing, cleaning or painting of buildings, bridges or viaducts within this State are unsafe, or liable to prove dangerous to the life or limb of any person, the State Factory Inspector, or such local authority or authorities shall immediately cause an inspection to be made of such scaffolding, platform or device, or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons or other parts connected therewith. If after examination, such scaffolding, platform or device or any of such parts, is found to be dangerous to the life or limb of any person, the State Factory Inspector, or such local authority shall at once notify the person responsible for its erection or maintenance, of such fact, and warn him against the use, maintenance or operation thereof, and prohibit the use thereof, and require the same to be altered, and reconstructed so as to avoid such danger. Such notice may be served personally upon the person responsible for its erection or maintenance, or by conspicuously affixing it to the scaffolding, platform or other such device, or the part thereof declared to be unsafe. After such notice has been so served or affixed, the person responsible therefor shall cease using and immediately remove such scaffolding, platform or other device, or part thereof, and alter or strengthen it in such manner as to render it safe.

The State Factory Inspector, or any of his deputies, or such local authority, whose duty it is, under the terms of this act, to examine or test any scaffolding, platform or other similar device, or part thereof, required to be erected and maintained by this section, shall have free access at all reasonable hours, to any building, or structure, or premises containing such scaffolding, platform or other similar device, or parts thereof, or where they may be in use. All swinging and stationary scaffolding, platforms

and other devices shall be so constructed as to bear four times the maximum weight required to be depended therein, or placed thereon, when in use, and such swinging scaffolding, platform or other device, shall not be so overloaded or overcrowded as to render the same unsafe or dangerous.

§ 5. That any person, firm or corporation in this State, hiring, employing or directing another to perform labor of any kind, in the erecting, repairing, altering or painting of any water pipe, stand pipe, tank, smoke stack, chimney, tower, steeple, pole, staff, dome or cupola, when the use of any scaffold, staging, swing, hammock, support, temporary platform or other similar contrivance are required or used, in the performance of such labor, shall keep and maintain at all times, while such labor is being performed, and such mechanical device is in use or operation, a safe and proper scaffold, stay, support or other suitable device, not less than sixteen (16) feet or more below such working scaffold, staging, swing, hammock, support or temporary platform, when such work is being performed, at a height of thirty-two (32) feet, [or more] for the purpose of preventing the person or persons performing such labor, from falling in case of any accident to such working scaffold, staging, swing, hammock, support or temporary platform.

§ 6. All contractors and owners, when constructing buildings in cities, where the plans and specifications require the floors to be arched between the beams thereof or where the floors or filling in between the floors are fireproof material or brick work, shall complete the flooring or filling in as the building progresses, to not less than within three tiers or beams below that on which the iron work is being erected. If the plans and specifications of such buildings do not require filling in between the beams or floors with brick or fire-proof material, all contractors for carpenter work in the course of construction shall lay the under flooring thereof or a safe temporary

floor on each story as the building progresses to not less than within two stories or floors below the one to which such building has been erected. Where double floors are not to be used, such owner or contractor shall keep plank over the floor two stories or floors below the story where the work is being performed. If the floor beams are of iron or steel the contractors for the iron or steel work of buildings in the course of construction or the owners of such buildings, shall thoroughly plank over the entire tier of iron or steel beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for the proper construction of such iron or steel work and for the raising and lowering of such buildings, or such spaces as may be designated by the plans and specifications for stairways and elevator shafts.

§ 7. If elevating machines or hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractors or owners shall cause the shafts or openings in each floor to be enclosed or fenced in on all sides by a substantial barrier or railing at least eight feet in height. Any hoisting machine or engine used in such building construction, shall where practicable, be set up or placed on the ground, and where it is necessary in the construction of such building to place such hoisting machine or engine on some floor above the ground floor, such machine or engine must be properly and securely supported with a foundation capable of safely sustaining twice the weight of such machine or engine. If a building in course of construction is five stories or more in height, no material needed for such construction shall be hoisted or lifted over public streets or alleys unless such street or alley shall be barricaded from use by the public. The chief officer in any city, town or village charged with the enforcement of local building laws, and the State Factory Inspector are hereby charged with

enforcing the provisions of this act. Provided, that in all cities in this State, where a local building commissioner is provided for by law, such officer shall be charged with the duty of enforcing the provisions of this act, and in case of his failure, neglect or refusal so to do, the State Factory Inspector shall, pursuant to the terms of this act, enforce the provisions thereof.

§ 7a. If elevating machines or hoisting apparatus, operated or controlled by other than hand power, are used in the construction, alteration or removal of any building or other structure, a complete and adequate system of communication by means of signals shall be provided and maintained by the owner, contractor or subcontractor, during the use and operation of such elevating machines or hoisting apparatus, in order that prompt and effective communication may be had at all times between the operator of engine or motive power of such elevating machine and hoisting apparatus, and the employees or persons engaged thereon, or in using or operating the same.

§ 8. It shall be the duty of all architects or draftsmen engaged in preparing plans, specifications or drawings to be used in the erection, repairing, altering or removing of any building or structure within the terms and provisions of this act to provide in all such plans, specifications and drawings for all the permanent structural features or requirements specified in this act; and any failure on the part of any such architect or draftsman to perform such duty, shall subject such architect or draftsman to a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00) for each offense.

§ 9. Any owner, contractor, subcontractor, foreman or other person, having charge of the erection, construction, repairing, alteration, removal, or painting of any building, bridge, viaduct or other structure within the provisions of this act, shall comply with all the terms

thereof and any such owner, contractor, subcontractor, foreman or other person, violating any of the provisions of this act shall upon conviction thereof be fined not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00) or imprisoned for not less than three (3) months nor more than two (2) years, or both fined and imprisoned in the discretion of the court.

And in case of any such failure to comply with any of the provisions of this act, any State Factory Inspector may, through the State's Attorney, or any other attorney, in case of his failure to act promptly, take the necessary legal steps to enforce compliance therewith.

If it becomes necessary, through the refusal or failure of the State's Attorney to act, for any other attorney to appear for the State in any suit involving the enforcement of any provision of this act, reasonable fees for the services of such attorney shall be allowed by the board of supervisors or county commissioners in and for the county in which such proceedings are instituted.

For any injury to person or property, occasioned by any wilful violations of this act, or wilful failure to comply with any of its provisions, a right of action shall accrue to the party injured, for any direct damages sustained thereby; and in case of loss of life by reason of such wilful violation or wilful failure as aforesaid, a right of action shall accrue to the widow of the person so killed, his lineal heirs or adopted children, or to any other person or persons who were, before such loss of life, dependent for support on the person or persons so killed, for a like recovery of damages for the injuries sustained by reason of such loss of life or lives.

OCCUPATIONAL DISEASE ACT.

AN ACT to promote the public health by protecting certain employees in this State from the dangers of occupational diseases, and providing for the enforcement thereof.

Approved May 26, 1911, in force July 1, 1911. Laws 1911, p. 330; Stat. Ann. § 5433. Rev. Stat. Ch. 48, p. 153.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every employer of labor in this State, engaged in carrying on any work or process which may produce any illness or disease peculiar to the work or process carried on, or which subjects the employees to the danger of illness or disease incident to such work or process, to which employees are not ordinarily exposed in other lines of employment, shall, for the protection of all employees engaged in such work or process, adopt and provide reasonable and approved devices, means or methods for the prevention of such industrial or occupational diseases as are incident to such work or process.

§ 2. Every employer in this State engaged in the carrying on of any process of manufacture or labor in which sugar of lead, white lead, lead chromate, litharge, red lead, arsenate of lead, or Paris green are employed, used or handled, or the manufacture of brass or the smelting of lead or zinc, which processes and employments are hereby declared to be especially dangerous to the health of the employees engaged in any process of manufacture or labor in which poisonous chemicals, minerals or other substances are used or handled by the employees therein in harmful quantities, or under harmful conditions, shall provide for and place at the disposal of the employees engaged in any such process or manufacture and shall maintain in good condition and without cost to the employees, proper working clothing to be kept and used exclusively for such employees while at work, and all employes

therein shall be required at all times while they are at work to use and wear such clothing; and in all processes of manufacture or labor referred to in this section which are unnecessarily productive of noxious or poisonous dusts, adequate and approved respirators shall be furnished and maintained by the employer in good condition and without cost to the employees, and such employees shall use such respirators at all times while engaged in any work necessarily productive of noxious or poisonous dusts.

§ 3. Every employer engaged in carrying on any process or manufacture referred to in Section 2 of this act, shall, as often as once every calendar month, cause all employees who come into direct contact with the poisonous agencies or injurious processes referred to in Section 2 of this act, to be examined by a competent licensed physician for the purpose of ascertaining if there exists in any employee any industrial or occupational disease or illness or any disease or illness due or incident to the character of the work in which the employee is engaged.

§ 4. It is hereby made the duty of any licensed physician who shall make the physical examination of employees under the provisions of Section 3 of this act, to make an immediate report thereof to the State Board of Health of the State of Illinois upon blanks to be furnished by said Board upon request, and if no such disease or illness is found, the physician shall so report, and if any such disease is found, the report shall state the name, address, sex and age of such employee and the name of such employer, and the nature of the disease or illness with which the employee is afflicted, and the probable extent and duration thereof, and the last place of employment: Provided, that the failure of any such physician to receive the blanks of the State Board of Health for the making of such report, shall not excuse such physician from making the report as herein provided.

§ 5. The Secretary of the State Board of Health

shall, immediately upon receipt of any report from any physician in accordance with the provisions of Section 4 of this act, transmit a copy thereof to the Illinois Department of Factory Inspection.

§ 6. Every employer engaged in carrying on any process or manufacture referred to in Section 2 of this act, shall provide, separate and apart from the workshop in which such employees are engaged, a dressing room and lavatory for the use of such employees who are exposed to poisonous or injurious dusts, fumes and gases, and such lavatory shall be kept and maintained in a clean and wholesome manner and provided with a sufficient number of basins or spigots, with adequate washing facilities, including hot and cold water, clean towels and soap and shower bath, and the dressing rooms shall be furnished with clothes presses or compartments, so that the ordinary street clothes of such employees shall be kept separate and apart from their working clothes.

§ 7. No employee shall take or be allowed to take any food or drink of any kind into any room or apartment in which any process or manufacture referred to in Section 2 of this act is carried on, or in which poisonous substances or injurious or noxious fumes, dusts or gases are present as the result of such work or process being carried on in such room or apartment, and the employees shall not remain in any such room or apartment during the time allowed for meals, and suitable provision shall be made and maintained by the employer for enabling the employees to take their meals elsewhere in such place of employment, and a sufficient number of sanitary closed receptacles containing wholesome drinking water shall be provided and maintained for the use of the employees within reasonable access and without cost to them.

§ 8. All employers engaged in carrying on any process or manufacture referred to in Section 2 of this act, shall provide and maintain adequate devices for carrying off all poisonous or injurious fumes from any fur-

naces which may be employed in any such process or manufacture, and shall also provide and maintain adequate facilities for carrying off all injurious dust, and the floors in any room or apartment where such work or process is carried on shall, so far as practicable, be kept and maintained in a smooth and hard condition, and no sweeping shall be permitted during working hours except where the floors in such workshop are dampened so as to prevent the raising of dust; and all ore, slag, dross and fumes shall be kept in some room or apartment separate from the working rooms occupied by the employees, and where practicable, all mixing and weighing of such ore, slag, dross or fume shall be done in such separate room or apartment, and all such material shall, so far as practicable, be dampened before being handled or transported by employees.

§ 9. When any flues are used in any such process or manufacture referred to in Section 2 of this act, and such flues are being cleaned out or emptied, the employer shall in every case provide and maintain a sufficient and adequate means or device, such as canvas bags or other practical device, or by dampening the dust, or some other sufficient method for catching and collecting the dust and preventing it from unreasonably fouling or polluting the air in which the employees are obliged to work, and wherever practicable, the dust occasioned in any process or manufacture referred to in Section 2 of this act, and any polishing or finishing therein, shall be dampened or wet down, and every reasonable precaution shall be adopted by the employer to prevent the unnecessary creation or raising of dust, and all floors shall be washed or scrubbed at least once every working day; and such parts of the work or process as are especially dangerous to employees, on account of poisonous fumes, dusts and gases, shall, where practicable, be carried on in separate rooms and under cover of some suitable and sufficient device to remove the danger to the health of such employees, as far

as may be reasonably consistent with the manufacturing process, and the fixtures and tools employed in any such process or manufacture, shall be thoroughly washed and cleaned at reasonable intervals.

§ 10. All hoppers or chutes or similar devices used in the course of any process or manufacture referred to in Section 2 of this act shall, where practicable, be provided with a hood or covering, and an adequate and sufficient apparatus or other proper device for the purpose of drawing away from the employees noxious, poisonous or injurious dusts, and preventing the employees from coming into unnecessary contact therewith; and all conveyances or receptacles used for the transportation about or the storage in any place where any such process or manufacture referred to in Section 2 of this act is carried on, shall be properly covered or dampened in such way as to protect the health of the employees, and no refuse of a dangerous character incident to the work or process carried on in any such place shall be allowed to unnecessarily accumulate on the floors thereof.

§ 11. It shall be the duty of the State Department of Factory Inspection to enforce the provisions of this act and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in this State, and for that purpose such department and its inspectors are empowered to visit and inspect at all reasonable times all places of employment covered by the provisions of this act. In the enforcement of the provisions hereof the Department of Factory Inspection shall give proper notice in regard to any violation of this act to any employer of labor violating it, and directing the installment of any approved device, means or method reasonably necessary, in his judgment, to protect the health of the employees therein, and such notice shall be written or printed and shall be signed officially by the Chief State Factory Inspector or the Assistant Chief State Factory Inspector, and said notice may be served by delivering the same to the person upon whom service is to be had, or by leaving at his usual place of abode or business an exact copy thereof, or by sending a copy thereof to such person

by registered mail, and upon receipt of such notice calling the attention of the employer to such violation, he shall immediately comply with all the provisions of this act.

§ 12. If any occupational or industrial disease or illness or any disease or illness peculiar to the work or process carried on shall be found in any place of employment in this State by the inspectors of the State Department of Factory Inspection, or called to their attention by the State Board of Health, which disease or illness shall be caused in whole or in part, in the opinion of the inspector, by a disregard by the employer of the provisions of this act, or a failure on the part of the employer to adopt reasonable appliances, devices, means or methods which are known to be reasonably adequate and sufficient to prevent the contraction or continuation of any such disease or illness, it shall be the duty of the Department of Factory Inspection to immediately notify the employer in such place of employment, in the manner provided in Section 12 of this act, to install adequate and approved appliances, devices, means or methods to prevent the contracting and continuance of any such disease or illness and to comply with all the provisions of this act.

§ 13. For the purpose of disseminating a general knowledge of the provisions of this act and of the dangers to the health of employees in any work or process covered by the provisions of this act, the employer shall post in a conspicuous place in every room or apartment in which any such work or process is carried on, appropriate notices of the known dangers to the health of any such employees arising from such work or process, and simple instructions as to any known means of avoiding, so far as possible, the injurious consequences thereof, and the Chief State Factory Inspector shall, upon request, have prepared a notice covering the salient features of this act, and furnish a reasonable number of copies thereof to employers in this State, covered by the provisions of this act, which notice shall be posted by every such employer in a conspicuous place in every room or apartment in such place of employment. The notices required by this section shall be printed on cardboard of suitable character

and the type used shall be such as to make them easily legible, and in addition to English they shall be printed in such other language or languages as may be necessary to make them intelligible to the employees.

§ 14. Any person, firm or corporation who shall, personally or through any agent, violate any of the provisions of this act, or who omits or fails to comply with any of its requirements, or who obstructs or interferes with any examination or investigation being made by the State Department of Factory Inspection in accordance with the provisions of this act, or any employee who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished for the first offense by a fine of not less than Ten Dollars (\$10.00) or more than One Hundred Dollars (\$100.00), and upon conviction of the second or subsequent offenses, shall be fined not less than Fifty Dollars (\$50.00) or more than Two Hundred Dollars (\$200.00), and in each case shall stand committed until such fine and costs are paid, unless otherwise discharged by due process of law.

§ 15. For any injury to the health of any employee proximately caused by any wilful violation of this act or wilful failure to comply with any of its provisions, a right of action shall accrue to the party whose health has been so injured, for any direct damages sustained thereby; and in case of the loss of life by reason of such wilful violation or wilful failure as aforesaid, a right of action shall accrue to the widow of such deceased person, his lineal heirs or adopted children, or to any other person or persons who were, before such loss of life, dependent for support upon such deceased person, for a like recovery of damages for the injury sustained by reason of such loss of life, not to exceed the sum of Ten Thousand Dollars: Provided, that every such action for damages in case of death shall be commenced within one year after the death of such employee.

§ 16. The invalidity of any portion of this act shall not affect the validity of any portion thereof which can be given effect without such invalid part.

BLOWER ACT.

AN ACT to compel the using of blowers upon metal polishing machinery.

Approved June 11, 1897; in force July 1, 1897. Rev. Stat. Ch. 48, § 43.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all persons, companies or corporations operating any factory or workshop, where emery wheels or emery belts of any description are used, either solid emery, leather, leather-covered, felt, canvas, linen, paper, cotton, or wheels or belts rolled or coated with emery or corundum, or cotton wheels used as buffs, shall provide the same with blowers, or similar apparatus, which shall be placed over, besides or under such wheels or belts in such a manner as to protect the person or persons using the same from the particles of the dust produced and caused thereby, and to carry away the dust arising from or thrown off by such wheels or belts while in operation, directly to the outside of the building, or to some receptacle placed so as to receive and confine such dust: Provided, that grinding machines upon which water is used at the point of the grinding contact shall be exempt from the provisions of this act, and provided, this act shall not apply to small shops employing not more than one man in such work.

§ 2. It shall be the duty of any person, company or corporation operating any such factory or workshop to provide or construct such appliances, apparatus, machinery or other things necessary to carry out the purpose of this act, as set forth in the preceding section, as follows: Each and every such wheel shall be fitted with a sheet of cast iron hood or hopper of such form and so applied to such wheel or wheels that the dust or refuse therefrom will fall from such wheels, or will be thrown into such hood or hopper by centrifugal force and be carried off by

the current of air into a suction pipe attached to same hood or hopper.

§ 3. Each and every such wheel six inches or less in diameter shall be provided with a three-inch suction pipe; wheels six inches to twenty-four inches in diameter with four-inch suction pipe; wheels from twenty-four inches to thirty-six inches in diameter with five-inch suction pipe; and all wheels larger in diameter than those stated above shall be provided each with a suction pipe not less than six inches in diameter. The suction pipe from each wheel, so specified, must be full size to the main trunk suction pipe, and the main suction pipe to which smaller pipes are attached, shall, in its diameter and capacity, be equal to the combined area of such smaller pipes attached to the same, and the discharge pipe from the exhaust fan, connected with such suction pipe or pipes, shall be as large or larger than the suction pipe.

§ 4. It shall be the duty of any person, company or corporation operating any such factory or workshop to provide the necessary fans or blowers to be connected with such pipe or pipes, as above set forth, which shall be run at a rate of speed as will produce a velocity of air in such suction or discharge pipes of at least nine thousand feet per minute to an equivalent suction or pressure of air equal to raising a column of water not less than five inches in a U-shape tube. All branch pipes must enter the main trunk pipe at an angle of forty-five degrees or less, the main suction or trunk pipe shall be below the emery or buffing wheels, and as close to the same as possible, and to be either upon the floor or beneath the floor on which the machines are placed to which such wheels are attached. All bends, turns or elbows in such pipes must be made with easy, smooth surfaces, having a radius in the throat of not less than two diameters of the pipe on which they are connected.

§ 5. It shall be the duty of any Factory Inspector, Sheriff, Constable or Prosecuting Attorney of any coun-

ty in this State in which any such factory or workshop is situated, upon receiving notice in writing signed by any person having knowledge of such facts, accompanied by the sum of one dollar as compensation for his services, that such factory or workshop is not provided with such appliances as herein provided for, to visit any such factory or workshop and inspect the same, and for such purpose, they are hereby authorized to enter any factory or workshop in this State during working hours, and upon ascertaining the facts that the proprietors or managers of such factory or workshop have failed to comply with the provisions of this act, to make complaint of the same in writing before a justice of the peace or police magistrate having jurisdiction, who shall thereupon issue his warrant, directed to the owner, manager or director, in such factory or workshop, who shall be thereupon proceeded against for the violation of this act as hereinafter mentioned and it is made the duty of the Prosecuting Attorney to prosecute all cases under this act.

§ 6. Any such person or persons or company, or managers, or directors of any such company or corporation who shall have the charge or management of such factory or workshop, who shall fail to comply with the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof before any court of competent jurisdiction shall be punished by a fine of not less than \$25, and not exceeding \$100.

NOXIOUS FUMES ACT.

AN ACT in relation to employments creating poisonous fumes or dust in harmful quantities, and to provide for the enforcement thereof.

Approved June 29, 1915; in force July 1, 1915. Laws 1915, p. 431.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every employer of labor in this State, engaged in the manufacture, repairing or altering of any metals, wares or merchandise which may produce or generate poisonous or noxious fumes or dusts in harmful quantities such as metal polishing, grinding, plating and dipping of metals in acid solutions or dips, are hereby declared to be especially dangerous to the health of the employees so engaged. Such manufacture, repairing or altering of any metals or merchandise in such processes and places of employment shall be conducted in rooms lying wholly above the surface of the ground.

§ 2. It shall be the duty of the Chief State Factory Inspector, the Assistant State Factory Inspector, and the deputy factory inspectors to enforce the provisions of this act and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in this State, and for that purpose such inspectors are empowered to visit and inspect, at all reasonable hours, all places that may come under the provisions of this act. In the enforcement thereof, said Chief State Factory Inspector, the Assistant Chief State Factory Inspector, and the deputy factory inspectors shall give proper notice in regard to any violation of this act to any employer of labor violating it, and direct the proper changes to be made to protect the health of the employees therein, and such notice shall be written or printed and shall be signed by the Chief State Factory Inspector, or any one of his assistants authorized by him to sign such orders, and said notice may be served by delivering the same to the person upon whom service is to be had, or by leaving at

usual place of abode or business an exact copy thereof, or by sending a copy thereof to such person by mail, and upon receipt of such notice calling the attention of the employer to such violation, he shall immediately comply with the provisions of this act.

§ 3. Any person, firm or corporation who shall, personally, or through any agent, violate any of the provisions of this act, or who omits or fails to comply with any of its requirements, or who obstructs or interferes with any examination or investigation being made by the Chief State Factory Inspector, the Assistant Chief State Factory Inspector, and the deputy factory inspectors in accordance with the provisions of this act, or any employee who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished for the first offense by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00); and upon conviction of the second or subsequent offense, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and in each case shall stand committed until such fine and costs are paid, unless otherwise discharged by due process of law.

§ 4. For any injury to the health of any employee proximately caused by any wilful violation of this act or wilful failure to comply with any of its provisions, a right of action shall accrue to the party whose health has been so injured, for any direct damages sustained thereby; and in case of the loss of life by reason of such wilful violation or wilful failure as aforesaid, a right of action shall accrue to the widow of such deceased person, his lineal heirs or adopted children, or to any other person or persons who were, before such loss of life, dependent for support upon such deceased person, for recovery of damages for the injury sustained by reason of such loss of life, not to exceed the sum of twenty-five thousand dollars: Provided, that every such action for damages in case of death shall be commenced within two (2) years after the death of such employee.

GARMENT MANUFACTURE ACT.

AN ACT to regulate the manufacture of clothing, wearing apparel and other articles in this State, and to provide for the appointment of State Inspectors to enforce the same and to make an appropriation therefor.

Approved June 17, 1893; in force July 1, 1893. Rev. Stat. Ch. 48, § 21.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no room or rooms, apartment or apartments in any tenement or dwelling house used for eating or sleeping purposes, shall be used for the manufacture, in whole or in part, of coats, vests, trousers, knee-pants, overalls, cloaks, shirts, ladies' waists, purses, feathers, artificial flowers or cigars, except by the immediate members of the family living therein. Every such workshop shall be kept in a cleanly state, and shall be subject to the provisions of this act; and each of said articles made, altered, repaired or finished in any such workshops shall be subject to inspection and examination, as hereinafter provided, for the purpose of ascertaining whether said articles, or any of them, or any part thereof, are in cleanly condition and free from vermin and any matter of an infectious and contagious nature; and every person so occupying or having control of any workshop as aforesaid, shall within fourteen days from the taking effect of this act, or from the time of beginning of work in any workshop as aforesaid, notify the Board of Health of the location of such workshop, the nature of the work there carried on, and the number of persons therein employed.

§ 2. If the Board of Health of any city or said State Inspector finds evidence of infectious or contagious diseases present in any workshop, or in goods manufactured, or in process of manufacture therein, and if said Board or Inspector shall find said shop in an unhealthy condition, or the clothing and materials used therein to be unfit for use, said Board or Inspector shall issue such order or orders as the public health may require, and the

Board of Health are hereby enjoined to condemn and destroy all such infectious and contagious articles.

§ 3. Whenever it shall be reported to said Inspector or to the Board of Health, or either of them, that coats, vests, trousers, knee-pants, overalls, cloaks, shirts, ladies' waists, purses, feathers, artificial flowers or cigars are being transported to this State, having been previously manufactured in whole or part under unhealthy conditions, said Inspector shall examine said goods and the condition of their manufacture, and if upon such examination said goods, or any of them, are found to contain vermin, or to have been in improper places or under unhealthy conditions, he shall make report thereof to the Board of Health, or Inspector, which Board or Inspector shall thereupon make such order or orders as the public health shall require and the Board of Health are hereby empowered to condemn or destroy all such articles.

§ 4. The words "manufacturing establishment," "factory" or "workshop," wherever used in this act, shall be construed to mean any place where goods or products are manufactured or repaired, cleaned, or sorted, in whole, or part, for sale, or for wages. Whenever any house, room or place is used for the purpose of carrying on any process of making, altering, repairing or finishing for sale, or for wages any coats, vests, trousers, knee-pants, overalls, cloaks, shirts, ladies' waists, purses, feathers, artificial flowers or cigars, or any wearing apparel of any kind whatsoever intended for sale, it shall within the meaning of this act be deemed a workshop for the purposes of inspection. And it shall be the duty of every person, firm or corporation to keep a complete list of all such workshops, in his, their or its employ, and such lists shall be produced for inspection on demand by the Board of Health or any of the officers thereof, or by the State Inspector, Assistant Inspector, or any of the deputies appointed under this act.

§ 5. Any person, firm or corporation who fails to comply with any provision of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than \$3 nor more than \$100 for each offense.

BUTTERINE AND ICE CREAM MANUFACTURE ACT.

AN ACT relating to the manufacture of Butterine and Ice Cream and providing for the enforcement thereof.

Approved June 3, 1907; in force July 1, 1907.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all buildings or rooms occupied by butterine and ice cream manufacturers shall be drained and plumbed in a manner conducive to the proper and healthful sanitary condition thereof, and shall be constructed with air shafts, windows and ventilating pipes sufficient to insure ventilation. The Factory Inspector shall direct the proper drainage, plumbing and ventilation of such rooms or buildings. No cellar or basement now used for the manufacture of butterine or ice cream shall be so occupied or used unless the proprietor shall comply with the sanitary provisions of this act.

§ 2. Every room used for the manufacture of butterine and ice cream shall be at least eight feet in height, and shall have, if deemed necessary by the Factory Inspector, an impermeable floor, constructed of cement, or of tiles laid in cement, or an additional flooring of wood, properly saturated with linseed oil. The side walls of such room shall be plastered and wainscoted. The Factory Inspector may require the side walls and ceiling to be whitewashed at least once in three months. He may also require the woodwork of such walls to be painted. The furniture and utensils shall be so arranged as to be readily cleansed, and not prevent the proper cleaning of any part of the room. The manufactured butterine and ice cream shall be kept in dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be properly cleaned. No domestic animal shall be allowed to remain in a room where butterine or ice cream is manufactured or stored, and no water closets

or ash pit shall be within or connected with the rooms used in the manufacture of butterine or ice cream.

§ 3. The State Factory Inspector shall cause such manufactories to be inspected. If it be found, upon such inspection, that the manufactories so inspected are constructed and conducted in compliance with the provisions of this act, the Factory Inspector shall issue a certificate to the persons owning or conducting such manufactories.

§ 4. If, in the opinion of the State Factory Inspector, alterations are required in or upon premises occupied and used as butterine and ice cream manufactories, in order to comply with the provisions of this act, a written notice shall be served by him upon the owner, agent or lessee of such premises, either personally or by mail, requiring such alterations to be made within sixty days after such service, and such alterations shall be made accordingly.

§ 5. Any person who violates any of the provisions of this act, or refuses to comply with any of the requirements as provided herein, of the Factory Inspector or his deputy, who are hereby charged with the enforcement of this act, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) for the second offense, or imprisonment for not more than thirty days, and for a third offense by a fine not less than five hundred dollars (\$500.00) nor more than sixty (60) days imprisonment, or both.

HOURS OF SERVICE OF WOMEN ACT.

AN ACT to regulate and limit the hours of employment of females in any mechanical or mercantile establishment, or factory, or laundry, hotel, or restaurant, or telegraph or telephone establishment or office thereof, or in any place of amusement, or by any express or transportation or public utility business, or by any common carrier, or in any public institution, incorporated or unincorporated in this State, in order to safeguard the health of such employees; to provide for its enforcement and a penalty for its violation.

Approved June 15, 1909; in force July 1, 1909. Amended June 10, 1911; in force July 1, 1911. Laws 1911, p. 328. Rev. Stat. Ch. 48, § 121. Stat. Ann. § 5289.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no female shall be employed in any mechanical or mercantile establishment, or factory, or laundry, or hotel, or restaurant, or telegraph or telephone establishment or office thereof, or in any place of amusement, or by any person, firm or corporation engaged in any express or transportation or public utility business, or by any common carrier, or in any public institution, incorporated or unincorporated in this State, more than ten hours during any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four hours of any day.

§ 2. Any employer who shall require or permit or suffer any female to work in any of the places mentioned in Section 1 of this act more than the number of hours provided for in this act, during any day of twenty-four hours, or who shall fail, neglect or refuse so to arrange the work of females in his employ that they shall not work more than the number of hours provided for in this act, during any one day, or who shall permit or suffer any overseer, superintendent or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be

fined for each offense in a sum of not less than \$25.00 or more than \$100.00.

§ 3. The State Department of Factory Inspection shall be charged with the duty of enforcing the provisions of this act, and prosecuting all violations thereof.

§ 4. All acts and parts of acts in conflict herewith are hereby repealed.

§ 5. Every employer to whom this act shall apply, shall keep a time book or record showing for each day that his establishment is open the hours during which each and every female in his employ, to whom this act applies, is employed. Such time book or record shall be open at all reasonable hours to the inspection of the officials of the Factory Inspection Department. The failure or omission to keep such record, or a false statement contained therein, or any false statement made by any person to an official of the Factory Inspection Department, in reply to any question put in carrying out the provisions of this act, shall be punishable on conviction by a penalty of not more than \$25.00 for each offense.

Statute limiting hours of service of women to eight hours—declared invalid.

Ritchie v People, 155 Ill. Sup. 98.

Contra: *Ritchie v Wayman*, 244 Ill. Sup. 509.

See: *People v City of Chicago*, 256 Ill. Sup. 558.

Legislation which limits right to contract as to what shall constitute a day's work was formerly declared invalid by courts as infraction of liberty.

Glover v People, 201 Ill. Sup. 545.

Sweet v People, 200 Ill. 536.

Statute limiting day's service of women to ten hours in Massachusetts, upheld.

Riley v Commonwealth, 232 U. S. 671.

Limiting hours of labor; see:

Holden v Hardy, 169 U. S. 366.

State v Buchanan, 29 Wash. 602, 70 Pac. 52.

Statute of California, prohibiting excess over eight hours per day of service of women does not infringe on "freedom to contract."

Miller v Wilson, 236 U. S. 373.

CHILD LABOR ACT.

AN ACT to regulate the employment of children in the State of Illinois, and to provide for the enforcement thereof.

Approved May 15, 1903; in force July 1, 1903. Rev. Stat. Ch. 48, § 20. Ann. Stat. § 5297.

SECTION 1. Child under 14 years.—*Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no child under the age of fourteen years shall be employed, permitted or suffered to work at any gainful occupation in any theater, concert hall or place of amusement where intoxicating liquors are sold or in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, within this State. That no child under fourteen years of age shall be employed at any work performed for wages or other compensation, to whomsoever payable, during any portion of any month when the public schools of the town, township, village or city in which he or she resides are in session, nor be employed at any work before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening: Provided, that no child shall be allowed to work more than eight hours in any one day.

§ 2. **Register.**—It shall be the duty of every person, firm or corporation, agent or manager of any firm or corporation employing minors over fourteen years and under sixteen years of age in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, passenger or freight elevator, factory or workshop as as messenger or driver therefor, within this State, to keep a register in said mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, factory

or workshop in which said minors shall be employed or permitted or suffered to work, in which register shall be recorded the name, age and place of residence of every child employed or suffered or permitted to work therein, or as messenger or driver therefor, over the age of fourteen and under the age of sixteen years; and it shall be unlawful for any person, firm or corporation, agent or manager, of any firm or corporation to hire or employ, or to permit or suffer to work in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, any child under the age of 16 years and over 14 years of age, unless there is first produced and placed on file in such mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, factory or workshop, theater, concert hall or place of amusement, an age and school certificate approved as hereinafter provided.

§ 3. **Wall Lists.**—Every person, firm or corporation, agent or manager of a corporation employing or permitting or suffering to work five or more children under the age of sixteen years and over the age of fourteen in any mercantile institution, store, office, laundry, hotel, manufacturing establishment, factory or workshop, shall post and keep posted in a conspicuous place in every room in which such help is employed, or permitted or suffered to work a list containing the name, age and place of residence of every person under the age of sixteen years employed, permitted or suffered to work in such room.

§ 4. **Age and School Certificate.**—No child under sixteen years of age and over fourteen years of age shall be employed in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, passenger or freight elevator, factory or workshop, or as mes-

senger or driver therefor, unless there is first produced and placed on file in such mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, factory or workshop, and accessible to the State Factory Inspector, Assistant Factory Inspector or Deputy Factory Inspector, an age and school certificate as hereinafter prescribed; and unless there is kept on file and produced on demand of said inspectors of factories a complete and correct list of all the minors under the age of sixteen years so employed who cannot read at sight and write legibly simple sentences, unless such child is attending night school as hereinafter provided.

§ 5. **Age and School Certificate.**—HOW APPROVED. An age and school certificate shall be approved only by the Superintendent of Schools or by a person authorized by him in writing; or where there is no superintendent of schools, by a person authorized by the School Board: **Provided**, that the superintendent or principal of a parochial school shall have the right to approve an age and school certificate and shall have the same rights and powers as the superintendent of public schools to administer the oaths herein provided for children attending parochial schools: **Provided**, further, that no member of a school board or other person authorized as aforesaid, shall have authority to approve such certificates for any child then in or about to enter his own establishment, or the employment of a firm or corporation of which he is a member, officer or employee. The person approving these certificates shall have the authority to administer the oath provided herein, but no fee shall be charged therefor. It shall be the duty of the school board or local school authorities to designate a place (connected with their offices, when practicable) where certificates shall be issued and recorded, and to establish and maintain the necessary records and clerical service for carrying out the provisions of this act.

§ 6. **Proof of Age.**—An age and school certificate shall not be approved unless satisfactory evidence is furnished by the last school census, the certificate of birth or baptism of such child, the register of birth of such child with a town or city clerk, or by the records of the public or parochial schools, that such child is of the age stated in the certificate: Provided, that in cases arising wherein the above proof is not obtainable, the parent or guardian of the child shall make oath before the juvenile or county court as to the age of such child, and the court may issue to said child an age certificate as sworn to.

§ 7. **Employment Ticket.**—The age and school certificate of a child under sixteen years of age shall not be approved and signed until he presents to the person authorized to approve and sign the same, a school attendance certificate, as hereinafter prescribed, duly filled out and signed. A duplicate of such age and school certificate shall be filled out and shall be forwarded to the State Factory Inspector's office. Any explanatory matter may be printed with such certificate in the discretion of the school board or superintendent of schools. The employment and the age and school certificates shall be separately printed and shall be filled out, signed and held or surrendered as indicated in the following forms:

SCHOOL CERTIFICATE

(Name of school.) (City or town and date.)

This certifies (name of minor) of theth grade, can read and write legibly simple sentences.

This also certifies that according to the records of this school, and in my belief, the said (name of minor) was born at (name of city or town) in (name of county) on the (date) and is now (number of years and months) old.

(Name of parent or guardian.)

(Residence.)

(Signature of teacher)grade.

Correct. (Name of principal.)

(Name of school.)

EVENING SCHOOL ATTENDANCE CERTIFICATE

(Date.)

This certifies that (name of minor) is registered in and regularly attends the evening school.

This also certifies that according to the records of my school and in my belief the said (name of minor) was born at (name of city or town) on the day of (year), and is now (number of years and months) old.

(Name of parent or guardian.)

(Residence.)

(Signature of teacher.)

(Signature of principal.)

AGE AND SCHOOL CERTIFICATE

This certifies that I am (father, mother, guardian or custodian) of (name of minor), and that (he or she) was born at (name of town or city) in the (name of county, if known) and State or country of on the (day of birth and year of birth) and is now (number of years and months) old.

(Signature of parent, guardian or custodian.)

(City or town and date.)

There personally appeared before me the above named (name of person signing) and made oath that the foregoing certificate by (him or her) signed is true to the best of (his or her) knowledge. I hereby approve the foregoing certificate of (name of child), height (feet and inches), weight, complexion (fair or dark), hair (color), having no sufficient reason to doubt that (he or she) is of the age therein certified.

Owner of Certificate.—This certificate belongs to (name of child in whose behalf it is drawn) and is to be surrendered to (him or her) whenever (he or she) leaves the service of the corporation or employer holding the same; but if not claimed by said child within thirty days from such time it shall be returned to the superintendent of schools, or where there is no superintendent of schools to the school board.

(Signature of person authorized to approve and sign with official character authority.)

(Town or city and date.)

Illiteracy.—In the case of a child who cannot read at sight and write legibly simple sentences, the certificate shall continue as follows, after the word “sentences;” “I hereby certify that (he or she) is regularly attending the (name of public or parochial evening school).” This certificate shall continue in force just as long as the regular attendance of said child at said evening school is certified weekly by the teacher and principal of said school.

Evening School.—In any city or town in which there is no public or parochial evening school, an age and school certificate shall not be approved for a child under the age of sixteen years who can not read at sight and write legibly simple sentences. When the public or parochial evening schools are not in session an age and school certificate shall not be approved for any child who can not read at sight and write legibly simple sentences. The certificate of the principal of a public or parochial school shall be prima facie evidence as to the literacy or illiteracy of the child.

§ 8. **Schooling Required.**—No person shall employ any minor over fourteen years of age and under sixteen years, and no parent, guardian or custodian shall permit to be employed any such minor under his control, who can not read at sight and write legibly simple sentences, while a public evening school is maintained in the town or city in which such minor resides, unless such minor is a regular attendant at such evening school.

§ 9. **Duties of State Inspector of Factories.**—The State Inspector of Factories, his assistants or deputies, shall visit all mercantile institutions, store, offices, laundries, manufacturing establishments, bowling alleys, theaters, concert halls or places of amusement, factories or workshops, and all other places where minors are or may be employed, in this State, and ascertain whether

any minors are employed contrary to the provisions of this act. Inspectors of factories may require that age and school certificates, and all lists of minors employed in such factories, workshops, mercantile institutions, and all other places where minors are employed as provided for in this act shall be produced for their inspection, on demand.

And, Provided further, that upon written complaint to the school board or local school authorities of any city, town, district or municipality, that any minor (whose name shall be given in such complaint) is employed in any mercantile institution, store, office, laundry, manufacturing establishment, bowling alley, theater, concert hall or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, contrary to the provisions of this act, it shall be the duty of such school board or local school authority to report the same to the State Inspector of Factories.

§ 10. **Hours of Labor.**—No person under the age of sixteen shall be employed or suffered or permitted to work at any gainful occupation more than forty-eight hours in any one week, nor more than eight hours in any one day; or before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening. Every employer shall post in a conspicuous place in every room where such minors are employed a printed notice stating the hours required of them each day of the week, the hours of commencing and stopping work and the hours when the time or times allowed for dinner or for other meals begins and ends. The printed form of such notice shall be furnished by the State Inspector of Factories, and the employment of any such minor for longer time in any day so stated shall be deemed a violation of this section.

§ 11. **Employments Forbidden Children Under Sixteen Years of Age.**—No child under the age of sixteen years shall be employed at sewing belts, or to assist in

sewing belts, in any capacity whatever; nor shall any child adjust any belt to any machinery; they shall not oil or assist in oiling, wiping or cleaning machinery; they shall not operate or assist in operating circular or band saws, wood-shapers, wood-jointers, planers, sand-paper or wood-polishing machinery, emery or polishing wheels used for polishing metal, wood-turning or boring machinery, stamping machines in sheet metal and tinware manufacturing, stamping machines in washer and nut factories, operating corrugating rolls, such as are used in roofing factories, nor shall they be employed in operating any passenger or freight elevators, steam boiler, steam machinery, or other steam generating apparatus, or as pin boys in any bowling alleys; they shall not operate or assist in operating dough brakes, or cracker machinery of any description; wire or iron straightening machinery; nor shall they operate or assist in operating rolling mill machinery, punches or shears, washing, grinding or mixing mill or calendar rolls in rubber manufacturing, nor shall they operate or assist in operating laundry machinery; nor shall children be employed in any capacity in preparing any composition in which dangerous or poisonous acids are used, and they shall not be employed in any capacity in the manufacture of paints, colors or white lead; nor shall they be employed in any capacity whatever in operating or assisting to operate any passenger or freight elevator; nor shall they be employed in any capacity whatever in the manufacture of goods for immoral purposes, or any other employment that may be considered dangerous to their lives or limbs, or where their health may be injured or morals depraved; nor in any theater, concert hall, or place of amusement wherein intoxicating liquors are sold; nor shall females under sixteen years of age be employed in any capacity where such employment compels them to remain standing constantly.

§ 12. **Prima Facie Evidence of Child's Employment.**

—The presence of any person under the age of sixteen

years in any manufacturing establishment, factory or workshop, shall constitute *prima facie* evidence of his or her employment therein.

§ 13. **Enforcement of Provisions of Act.**—It shall be the special duty of the State Factory Inspector to enforce the provisions of this act, and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in this State. It shall be the duty of the State Factory Inspector, Assistant State Factory Inspector and Deputy State Factory Inspectors under the supervision and direction of the State Factory Inspector, and they are hereby authorized and empowered to visit and inspect, at all reasonable times and as often as possible, all places covered by this act.

§ 14. **Penalty.**—Whoever, having under his control a child under the age of sixteen years, permits such child to be employed in violation of the provisions of this act, shall for each offense be fined not less than \$5 nor more than \$25, and shall stand committed until such fine and costs are paid.

A failure to produce to the Inspector of Factories, his assistants or deputies, any age and school certificates, or lists required by this act, shall constitute a violation of this act, and the person so failing shall, upon conviction, be fined not less than \$5 nor more than \$50 for each offense. Every person authorized to sign the certificate prescribed by Section 7 of this act, who certifies to any materially false statement therein shall be guilty of a violation of this act, and upon conviction be fined not less than \$5 nor more than \$100 for each offense, and shall stand committed until such fine and costs are paid.

Any person, firm or corporation, agent or manager, superintendent or foreman of any firm or corporation—whether for himself or for such firm or corporation, or by himself or through sub-agents or foremen, superintendent or manager, who shall violate or fail to comply with any of the provisions of this act, or shall refuse admittance

to premises or otherwise obstruct the Factory Inspector, Assistant Factory Inspector or Deputy Factory Inspectors in the performance of their duties, as prescribed by this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$5 nor more than \$100 for each offense, and shall stand committed until such fine and costs are paid.

§ 15. **Repeal.**—"An Act to Prevent Child Labor," approved June 17, 1891, in force July 1, 1891, and all other acts and parts of acts in conflict with this act, are hereby repealed.

Prohibition of employment of children under sixteen years of age in hazardous occupations does not deprive of liberty or property without due process of law.

Sturges & Burns Mfg. Co. v Beauchamp, 231 U.

S. 320; affg. 250 Ill. Sup. 303, 95 N. E. 204.

Employer must ascertain true age of child.

Beauchamp v Sturges & Burns Mfg. Co., 250 Ill.

Sup. 303.

Violation of act—Damages—See:

Stafford v Republic Iron & Steel Co., 238 Ill.

Sup. 371.

American Car & Foundry Co. v Armentraut, 214

Ill. Sup. 509.

Fortier v The Fair, 153 Ill. App. 200.

Froerer v Baker, 137 Ill. App. 588.

Nelson Morris & Co. v Stanfield, 81 Ill. App. 264.

Swift & Co. v Miller, 139 Ill. App. 192.

WASH ROOM ACT.

AN ACT to provide wash rooms in certain employments to protect the health of employees and secure public comfort.

Approved June 26, 1913; in force July 1, 1913. Laws 1913, p. 359.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every owner or operator of a coal mine, steel mill, foundry, machine shop, or other like business in which employees become covered with grease, smoke, dust, grime and perspiration to such extent that to remain in such condition after leaving their work without washing and cleansing their bodies and changing their clothing, will endanger their health or make their condition offensive to the public, shall provide and maintain a suitable and sanitary wash room at a convenient place in or adjacent to such mine, mill, foundry, shop or other place of employment for the use of such employees.

§ 2. Such wash room shall be so arranged that employees may change their clothing therein, and shall be sufficient for the number of employees engaged regularly in such employment; shall be provided with lockers in which employees may keep their clothing; shall be provided with hot and cold water and with sufficient and suitable places and means for using the same; and during cold weather, shall be sufficiently heated.

§ 3. It shall be the duty of the State and County Mine Inspectors, Factory Inspectors and other inspectors required to inspect places and kinds of business required by this act to be provided with wash rooms, to inspect such wash rooms and report to the owner or operator, the sanitary and physical condition thereof in writing, and make recommendations as to such improvements or changes as may appear to be necessary for compliance with the provisions of this act.

§ 4. Any owner or employer who shall fail or refuse to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.

§ 5. Any owner or employer who shall be convicted of a violation of the provisions of this act shall be subject to a conviction for succeeding offenses for each and every day he shall neglect or refuse to comply herewith.

Title of Act does not embrace more than one subject.

People v Solomon, 265 Ill. Sup. 28, 106 N. E. 458.

MISCELLANEOUS ACTS.

Statute requiring report by employer of accidents to State Bureau of Labor Statistics within 30 days, except where report made to Industrial Board under Workmen's Compensation Act.

May 24, 1907. Rev. Stat. Ch. 48, § 43.

Statute regulating motor vehicles.

June 10, 1911. Laws 1911, p. 487.

Statute for protection of delivery chauffeurs by shield or hood.

June 27, 1913. Laws 1913, p. 334.

Statute creating State Board of Arbitration for investigation of differences between employers and employees.

Aug. 28, 1895. Rev. Stat. Ch. 10.

Statute establishing state employment agencies.

May 11, 1913; amended June 24, 1915. Laws 1915, p. 414.

Statute regulating private employment agencies.

June 15, 1909. Rev. Stat. Ch. 48, § 67a.

Mines.

June 28, 1915. Laws 1915, p. 505.

Eight hours to constitute a legal day's work in absence of agreement to the contrary.

March 5, 1867. Rev. Stat. Ch. 48, § 1. Ann. Stat. § 5286.

Fire escapes.

Rev. Stat. Ch. 55a.

Conspiracy and boycott.

Rev. Stat. Ch. 38.

See: *Gillespie v People*, 188 Ill. Sup. 176.

Wages—Garnishment—Exemption of \$15 to head of family.

Rev. Stat. Ch. 62.

Wages—Suit for—Attorney's fee.

Rev. Stat. Ch. 108, § 13. Stat. Ann. § 5285.

Wages—Assignment of—Notice.

Laws 1915, p. 556.

Wages—Withholding by corporation.

Rev. St. Ch. 48, § 16.

Legal holidays: January 1; February 12; February 22; May 30; July 4; October 12; December 25; first Monday in September; Thanksgiving Day, and in cities of 200,000 inhabitants or over—from noon to midnight on Saturday.

Rev. Stat. Ch. 98, § 17.

Woman's right.

March 22, 1872. Rev. Stat. Ch. 48, p. 3.

TABLE OF COMPENSATION.

To find the present value of any sum payable weekly, multiply that sum by the present value of \$1 payable for the number of weeks for which such sum is payable.

Example.—To find the present value of \$7.20 payable at the end of each week for 100 weeks multiply \$7.20 by the present value of \$1 payable weekly for 100 weeks (shown in the tables to be \$97.1833). \$7.20—97.1833=\$699.72, present value.

PRESENT VALUE TABLES.

Present value at 3 per cent, compounded annually, at \$1.00 per week, payable at the end of each week, for any term from one week up to eight years.

| Term—weeks | 0 years | 1 year and — weeks. | 2 years and — weeks. | 3 years and — weeks. | 4 years and — weeks. | 5 years and — weeks. | 6 years and — weeks. | 7 years and — weeks. |
|--------------|---------|---------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| One | 0.9994 | 52.1947 | 101.8989 | 150.1554 | 197.0064 | 242.4928 | 286.6543 | 329.5296 |
| Two | 1.9983 | 53.1645 | 102.8405 | 151.0695 | 197.8939 | 243.3544 | 287.4968 | 330.3417 |
| Three | 2.9966 | 54.1337 | 103.7814 | 151.9831 | 198.7868 | 244.2155 | 288.3299 | 331.1534 |
| Four | 3.9943 | 55.1024 | 104.7219 | 152.8962 | 199.6802 | 245.0762 | 289.1535 | 331.9647 |
| Five | 4.9915 | 56.0705 | 105.6618 | 153.8087 | 200.5533 | 245.9364 | 290.0276 | 332.7755 |
| Six | 5.9881 | 57.0381 | 106.6012 | 154.7207 | 201.4387 | 246.7980 | 290.8322 | 333.5858 |
| Seven | 6.9841 | 58.0051 | 107.5401 | 155.6323 | 202.3237 | 247.6552 | 291.6964 | 334.3957 |
| Eight | 7.9796 | 58.9716 | 108.4784 | 156.5432 | 203.2082 | 248.5139 | 292.5001 | 335.2051 |
| Nine | 8.9745 | 59.9375 | 109.4162 | 157.4537 | 204.0921 | 249.3721 | 293.3333 | 336.0140 |
| Ten | 9.9688 | 60.9029 | 110.3534 | 158.3637 | 204.9756 | 250.2268 | 294.1660 | 336.8225 |
| Eleven | 10.9626 | 61.8677 | 111.2901 | 159.2731 | 205.8585 | 251.0871 | 294.9983 | 337.6305 |
| Twelve | 11.9558 | 62.8320 | 112.2263 | 160.1820 | 206.7410 | 251.9438 | 295.8301 | 338.4381 |
| Thirteen | 12.9484 | 63.7957 | 113.1620 | 161.0904 | 207.6229 | 252.8001 | 296.6614 | 339.2452 |
| Fourteen | 13.9405 | 64.7589 | 114.0971 | 161.9983 | 208.5043 | 253.6558 | 297.4942 | 340.0518 |
| Fifteen | 14.9320 | 65.7215 | 115.0317 | 162.9057 | 209.3853 | 254.5111 | 298.3226 | 340.8586 |
| Sixteen | 15.9229 | 66.6836 | 115.9658 | 163.8125 | 210.2657 | 255.3659 | 299.1525 | 341.6637 |
| Seventeen | 16.9133 | 67.6451 | 116.8993 | 164.7189 | 211.1457 | 256.2202 | 299.9819 | 342.4690 |
| Eighteen | 17.9031 | 68.6061 | 117.8323 | 165.6247 | 212.0251 | 257.0741 | 300.8109 | 343.2738 |
| Nineteen | 18.8924 | 69.5666 | 118.7648 | 166.5300 | 212.9041 | 257.9274 | 301.6394 | 344.0782 |
| Twenty | 19.8811 | 70.5265 | 119.6967 | 167.4348 | 213.7825 | 258.7803 | 302.4644 | 344.8821 |
| Twenty-one | 20.8692 | 71.4858 | 120.6281 | 168.3391 | 214.6605 | 259.6326 | 303.2949 | 345.6855 |
| Twenty-two | 21.8568 | 72.4446 | 121.5590 | 169.2429 | 215.5379 | 260.4845 | 304.1220 | 346.4885 |
| Twenty-three | 22.8438 | 73.4029 | 122.4894 | 170.1461 | 216.4148 | 261.3359 | 304.9486 | 347.2911 |
| Twenty-four | 23.8303 | 74.3606 | 123.4192 | 171.0492 | 217.2913 | 262.1868 | 305.7748 | 348.0931 |
| Twenty-five | 24.8161 | 75.3178 | 124.3485 | 171.9511 | 218.1672 | 263.0373 | 306.6004 | 348.8985 |
| Twenty-six | 25.8015 | 76.2744 | 125.2772 | 172.8528 | 219.0427 | 263.8872 | 307.4256 | 349.6959 |
| Twenty-seven | 26.7862 | 77.2305 | 126.2055 | 173.7540 | 219.9176 | 264.7367 | 308.2504 | 350.4966 |
| Twenty-eight | 27.7705 | 78.1860 | 127.1332 | 174.6547 | 220.7921 | 265.5857 | 309.0746 | 351.2969 |
| Twenty-nine | 28.7541 | 79.1410 | 128.0604 | 175.5549 | 221.6661 | 266.4342 | 309.8984 | 352.0967 |
| Thirty | 29.7372 | 80.0955 | 128.9870 | 176.4546 | 222.5395 | 267.2822 | 310.7217 | 352.8960 |
| Thirty-one | 30.7197 | 81.0494 | 129.9132 | 177.3537 | 223.4125 | 268.1298 | 311.5446 | 353.6949 |
| Thirty-two | 31.7017 | 82.0028 | 130.8388 | 178.2524 | 224.2850 | 268.9768 | 312.3670 | 354.4933 |
| Thirty-three | 32.6831 | 82.9556 | 131.7633 | 179.1505 | 225.1566 | 269.8234 | 313.1889 | 355.2915 |
| Thirty-four | 33.6640 | 83.9079 | 132.6884 | 180.0481 | 226.0248 | 270.6695 | 314.0103 | 356.0888 |
| Thirty-five | 34.6443 | 84.8596 | 133.6124 | 180.9452 | 226.8994 | 271.5151 | 314.8313 | 356.8859 |
| Thirty-six | 35.6240 | 85.8109 | 134.5359 | 181.8418 | 227.7699 | 272.3603 | 315.6519 | 357.6825 |
| Thirty-seven | 36.6032 | 86.7615 | 135.4589 | 182.7379 | 228.6399 | 273.2049 | 316.4719 | 358.4787 |
| Thirty-eight | 37.5818 | 87.7116 | 136.3814 | 183.6355 | 229.5094 | 274.0491 | 317.2915 | 359.2744 |
| Thirty-nine | 38.5599 | 88.6612 | 137.3033 | 184.5286 | 230.3784 | 274.8928 | 318.1106 | 360.0697 |
| Forty | 39.5374 | 89.6103 | 138.2247 | 185.4232 | 231.2469 | 275.7360 | 318.9293 | 360.8645 |
| Forty-one | 40.5144 | 90.5588 | 139.1456 | 186.3172 | 232.1149 | 276.5787 | 319.7475 | 361.6589 |
| Forty-two | 41.4908 | 91.5068 | 140.0659 | 187.2108 | 232.9825 | 277.4210 | 320.5652 | 362.4528 |
| Forty-three | 42.4667 | 92.4542 | 140.9858 | 188.1038 | 233.8495 | 278.2628 | 321.3825 | 363.2462 |
| Forty-four | 43.4420 | 93.4011 | 141.9051 | 188.9964 | 234.7160 | 279.1041 | 322.1993 | 364.0392 |
| Forty-five | 44.4161 | 94.3478 | 142.8245 | 189.8887 | 235.5821 | 280.0000 | 323.0156 | 364.8317 |
| Forty-six | 45.3909 | 95.2933 | 143.7421 | 190.7799 | 236.4476 | 280.8752 | 323.8315 | 365.6239 |
| Forty-seven | 46.3645 | 96.2385 | 144.6599 | 191.6769 | 237.3127 | 281.7501 | 324.6469 | 366.4156 |
| Forty-eight | 47.3376 | 97.1833 | 145.5771 | 192.5614 | 238.1773 | 282.6444 | 325.4618 | 367.2068 |
| Forty-nine | 48.3101 | 98.1275 | 146.4938 | 193.4514 | 239.0414 | 283.5363 | 326.2763 | 368.0000 |
| Fifty | 49.2821 | 99.0711 | 147.4100 | 194.3409 | 239.9049 | 284.4419 | 327.0903 | 368.7878 |
| Fifty-one | 50.2536 | 100.0143 | 148.3257 | 195.2299 | 240.7680 | 285.3478 | 327.9039 | 369.5777 |
| Fifty-two | 51.2244 | 100.9569 | 149.2408 | 196.1184 | 241.6307 | 286.2513 | 328.7169 | 370.3671 |

PRESENT VALUE TABLES—Continued.

Present value at 3 per cent, compounded annually, of \$1.00 semi-monthly, payable at the end of each half month, for any term from one-half month up to eight years.

(For method of computation, see example given under weekly table.)

| Term—half-months. | 0 years | 1 year and — months. | 2 years and — months. | 3 years and — months. | 4 years and — months. | 5 years and — months. | 6 years and — months. | 7 years and — months. |
|---------------------------|---------|----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| One-half | .9978 | 24.6020 | 47.5272 | 69.7927 | 91.4194 | 112.4242 | 132.8254 | 152.6894 |
| One | 1.9962 | 25.5705 | 48.4676 | 70.7068 | 92.3060 | 113.2850 | 133.6611 | 153.4509 |
| One and one-half | 2.9925 | 26.5378 | 49.4068 | 71.6178 | 93.1915 | 114.1449 | 134.4961 | 154.2616 |
| Two | 3.9875 | 27.5040 | 50.3450 | 72.5288 | 94.0761 | 115.0038 | 135.3301 | 155.0714 |
| Two and one-half | 4.9812 | 28.4690 | 51.2821 | 73.4388 | 94.9597 | 115.8619 | 136.1633 | 155.8805 |
| Three | 5.9738 | 29.4329 | 52.2172 | 74.3477 | 95.8423 | 116.7190 | 136.9956 | 156.6887 |
| Three and one-half | 6.9651 | 30.3956 | 53.1520 | 75.2556 | 96.7240 | 117.5752 | 137.8270 | 157.4961 |
| Four | 7.9552 | 31.3571 | 54.0858 | 76.1624 | 97.6047 | 118.4305 | 138.6576 | 158.3027 |
| Four and one-half | 8.9441 | 32.3175 | 55.0186 | 77.0683 | 98.4844 | 119.2848 | 139.4873 | 159.1085 |
| Five | 9.9317 | 33.2767 | 55.9502 | 77.9731 | 99.3631 | 120.1383 | 140.3162 | 159.9134 |
| Five and one-half | 10.9182 | 34.2348 | 56.8807 | 78.8769 | 100.2409 | 120.9908 | 141.1442 | 160.7176 |
| Six | 11.9034 | 35.1917 | 57.8102 | 79.7796 | 101.1177 | 121.8425 | 141.9713 | 161.5210 |
| Six and one-half | 12.8874 | 36.1475 | 58.7385 | 80.6814 | 101.9936 | 122.6932 | 142.7976 | 162.3235 |
| Seven | 13.8702 | 37.1022 | 59.6658 | 81.5821 | 102.8685 | 123.5430 | 143.6231 | 163.1252 |
| Seven and one-half | 14.8517 | 38.0557 | 60.5921 | 82.4818 | 103.7424 | 124.3920 | 144.4477 | 163.9262 |
| Eight | 15.8321 | 39.0081 | 61.5172 | 83.3806 | 104.6154 | 125.2400 | 145.2714 | 164.7263 |
| Eight and one-half | 16.8113 | 39.9593 | 62.4413 | 84.2783 | 105.4875 | 126.0871 | 146.0943 | 165.5257 |
| Nine | 17.7893 | 40.9094 | 63.3643 | 85.1750 | 106.3585 | 126.9334 | 146.9163 | 166.3242 |
| Nine and one-half | 18.7661 | 41.8584 | 64.2863 | 86.0706 | 107.2287 | 127.7787 | 147.7375 | 167.1219 |
| Ten | 19.7414 | 42.8063 | 65.2071 | 86.9653 | 108.0979 | 128.6231 | 148.5579 | 167.9189 |
| Ten and one-half | 20.7161 | 43.7536 | 66.1270 | 87.8590 | 108.9661 | 129.4667 | 149.3774 | 168.7150 |
| Eleven | 21.6894 | 44.6986 | 67.0457 | 88.7517 | 109.8334 | 130.3094 | 150.1961 | 169.5104 |
| Eleven and one-half | 22.6614 | 45.6431 | 67.9635 | 89.6434 | 110.6998 | 131.1512 | 151.0139 | 170.3050 |
| Twelve | 23.6323 | 46.5857 | 68.8786 | 90.5319 | 111.5625 | 131.9887 | 151.8271 | 171.0944 |

WRIT OF CERTIORARI

STATE OF ILLINOIS, }
 County of } ss.

The People of the State of Illinois,

To Industrial Board, GREETING:

Whereas, It has been represented to our Circuit Court of County, by the Praeipe or Petition of, filed in said Court, that on the day of, 191., in a certain proceeding, then pending before you, a decision or award has been rendered by you in favor of and against said for

And the said having filed a Praeipe or Petition for a Writ of Certiorari and we, being willing that said cause should be brought before our said Circuit Court:

Do Therefore Command You, that, without further delay, you certify to our said Circuit Court of County, a transcript of the decision or award and other proceedings had before you in said cause on or before the Monday of, 191..

To the Sheriff of said County, to execute and return in due form of law.

Witness,, Clerk of our said Circuit Court
 of County, and the Seal of said Court, at
, this day of 191..

.....Clerk.

PRAECIPE FOR CERTIORARI

The Clerk of said Court will issue a Writ of Certiorari, in accordance with the provisions of the Workmen's Compensation Act, to the Industrial Board of Illinois, directing said Board to certify to this Court a transcript of the decision, award and other proceedings had before it in the above entitled cause on or before the Monday of, 191., and the Clerk of said Court will also issue a Writ of Scire Facias in said cause to the aforesaid petitioner or applicant and direct same to the Sheriff of County to execute and make it returnable to the Term of said Court, 191..

.....Attorney.

WRIT OF SCIRE FACIAS

STATE OF ILLINOIS, {
County of } ss.

To the People of the State of Illinois,

To the Sheriff of said County, GREETING:

Whereas, At a session of the Industrial Board, held in the County of and State of Illinois, to-wit: on the day of 191.., before the said Industrial Board, then sitting in the city of, in said County, a decision or award was rendered by said Board in a certain proceeding then pending before said Industrial Board against and in favor of

We Do Therefore Hereby Command You, that you summon the said if he shall be found in your County, personally to be and appear before the said Circuit Court of County, on the first day of the next term thereof, to be holden at the Court House, in the city of, in said County, on the Monday of, 191.., then and there to show cause, if any he have or can show, why the said decision or award should not be reversed and set aside; and further to do and receive what shall then and there be adjudged by our said Court in the premises.

And have you then and there this Writ, and with your return thereon in what manner you shall have executed the same.

Witness,, Clerk of our said Court, and the

Seal thereof, at, in said County, this

day of, 191..

..... Clerk.

INDEX

A.

- Absence**—from work: 20.
- Acceptance**—of Act: Election.
- Accident**—report of—by employer: 41, 270, 282, 294, 296, 298—by employee: 270—notice of: 34, 266.
- Accidental injury** arising out of and in course of employment: 7, 57, 64, 70, 76, 84, 88, 100, 103, 186-207—burden of proof on claimant: 85, 200.
- Acid**—corrosive: 10.
- Advance**: 251.
- Agreement**: 272, 274—review of: 32—settlement within seven days: 264.
- Action at common law**: 63; Damages.
- Administration**: 106, 250-263.
- Address**—filing: 32.
- Affidavit**: 251, 256, 273.
- Alien**—employee—dependent: 11, 217, 218.
- Amicable adjustment**—form: 292.
- Ankle**—injury to: 233: Foot.
- Annual earnings**: Earnings.
- Annuity**: 36.
- Apoplexy**: 236.
- Appearance**—special: 250.
- Appliance**—safety: 10.
- Arm**—injury to: 16, 17, 233, 235.
- Appeal**: 30, 51, 99, 276—to County Court: 139—from County Court: 261, 263—to Circuit Court: 81, 261, 263, 132—to Appellate Court: 117, 115—to Supreme Court: 70, 130—constitutional question: 61, 117, 128.
- Appellate Court**—opinions: 45, 99, 117—appeal—writ of error: 30.
- Application for adjustment**: 270, 271, 285.
- Arbitrator**: 14, 50, 68, 88, 100, 129, 250, 271, 272—appointment: 26, 137, 289—request for: 289—hearing: 27—waiver: 292—oath: 275—salary: 23—decision: 27, 289, 300, 301—permanent incapacity: 26—deposit 26—committee of: 260—change in membership: 260.
- Assault**—Injury from: 104, 203.
- Assumption of risk**: Defense.
- Attachment proceeding**: 24.
- Attorney**: 274—Fees.
- Automobile**—Motor vehicle.
- Award**—record of: 25; review of: 32—not final: 51—not subject to lien: 33—not assignable: 33.

B.

Basis of computation: 19.
Belting: Safety Act.
Beneficiary: Dependent.
Benefit fund: 11, 38—Pension.
Bicycle—injury while riding on: 104.
Blood poisoning: 195, 236, 237, 240, 248.
Blower act: 367.
Body politic—employer: 10, 208.
Bond—to stay judgment: 32—for compensation: 305.
Books, papers and records—producing: 24.
Boycott: 391.
Bricklayer—injury to: 104.
Bridge: Safety Act.
Brief of Act: 1.
Brother: Dependent.
Burial expenses: 13.
Building: 9, 33, 68, 75, 267—structure: Structural Act.
Bulletin of Industrial Board: 33.
Butterine Manufacture Act: 375.

C.

Canvasser—injury to: 104.
Carpenter—injury to: 68, 103, 244, 248.
Carriage by land and water: 9, 79, 97, 174.
Casual employment: 11, 209.
Celluloid—injury from: 117.
Certified copy—of award: 31, 262.
Certiorari: 29, 68, 70, 72, 122, 261, 395, 396.
Chancery—suit in: 30, 125, 261.
Charitable association—employer: 10, 208. *
Chauffeur: 178, 390.
Chemist—employee: 209.
Child: Minor; Dependent.
Child Labor Act: 219, 379.
Circuit Court: Court.
Citing Act: 43.
Citizenship: 217, 218, 220; Alien.
City—employer: 10, 208.
Claim—in six months: 35—form: 283.
Class legislation: Constitution.
Classification: Constitution.
Clerk—injury to: 49.
Closet: Safety Act.
Collateral heir: 12, 13; Dependent.
Common law—action at: 12; Damages.

- Commutation:** 19, 106; Lump sum.
- Compensation:** 19-21, 88, 222-239—for death: 12, 222-225, 107—for non-fatal injury: 14-22, 226-239—for partial incapacity: 15—contract liability: 138—maximum: 14, 18—double: 242—claim in six months: 35—extinguished by death: 33, 34—refusal to pay: 31—securing payment: 274—reconsideration: 262, 263—measure of responsibility: 21—claim for—form: 283—tables: 393, 394.
- Complete disability:** Disability.
- Compulsory**—Act not: 30, 138, 319; Election.
- Computation:** 19, 240, 242—present value tables: 393, 394.
- Congress:** Federal Employers' Liability Act.
- Conservator:** 18, 19; Incompetent.
- Conspiracy:** 391.
- Constitution:** 46, 51, 55, 61, 149—defenses forfeited: 127, 180—mode of passage: 81, 90, 117, 133, 136—police power: 47, 48—due process of law: 72, 74—deprivation of life and property: 51, 53—freedom of contract: 48—delegation of judicial power: 47, 50—class legislation, 47, 49—trial by jury: 47, 50, 51, 72—search and seizure: 51—equal protection of law: 53—certiorari to Appellate Court: 117—waiver: 48, 115, 117—direct review by Supreme Court: 72—invalidity of part: 42, 43—amendments: 319—New York Act: 325.
- Construction work:** 9, 68; Structure.
- Construction of Act:** 77, 100, 103, 105, 107.
- Contempt:** 24.
- Continuance:** 256, 273.
- Contract**—of employment: 10, 11, 208, 209, 378—Act part of: 7, 50, 55, 56, 98, 138, 265—for extra-hazardous work: 41—of settlement in seven days: 34—absolving employer: 265—to assume risk: 185—in foreign states: 220—requiring employee to pay premium: 38.
- Contractor:** 41, 209, 266, 269—with public body: 11.
- Contribution:** 222-224; Dependent.
- Contributory negligence:** 55, 57, 115, 192; Defenses.
- Country place:** 10; Farming.
- Coroner**—evidence before: 251, 252, 254.
- Corrosive acid:** 10.
- Costs:** 31, 32, 262.
- County**—employer: 10, 208.
- Court**—appointment of arbitrator by: 137—concurrent jurisdiction: 133—Supreme—review by: 70, 72-75, 88—writ of error: 30—Appellate: certiorari: 117—Circuit: petition, 91—judgment, 31—review, 24, 29, 30, 32, 72, 88, 125, 175, 261—certiorari (blanks supplied by clerk of Cook Co.): 29, 118, 122, 293, 395—appeal to: 81—certified 129, 134—transcript. 276—County: 100—claim in excess of \$1,000: 129, 134—appeal from to Appellate Court. 130, 137, 139—writ of error: 30; Appeal; Opinions.
- Crane**—Safety Act.

D.

- Damages**—action for—barred: 12, 59, 63, 221—suit for: 37, 113—relief from: 7, 35—when employer liable for: 37—default of employer: 37*; Safety Act.
- Death**—compensation for: 12, 222-225—before total payments: 17, 38, 262—from other cause: 262—extinguishes right: 33—action for wrongful: 266.
- Decision**—of arbitrator: 27, 29—of board final: 28, 31, 250, 256, 259—form: 304—when not binding: 80.
- Dedimus protestatem**: 253.
- Defenses**—forfeited: 9, 48, 49, 55, 56, 57, 61, 62, 63, 64, 66, 67, 127, 324—contributory negligence reducing damages: 55, 57.
- Demolishing structure**: Structure.
- Dependent**: 12, 13, 18, 69, 86, 222-226, 239, 240, 241, 242—mother: 106—pecuniary loss: 109—distribution: 108—vested rights of: 109—death of: 33, 34—settlement with: 34—pension: 11; Lump sum.
- Deposition**: 251-253, 273.
- Deposit**: 26—of commuted value: 35—for committee of arbitration: 26.
- Deprivation of liberty and property**: 51; Constitution.
- Digest**: 140-269.
- Disability**—partial: 15—complete, 14, 15, 17, 229, 245—temporary total: 14, 15, 18, 227, 235, 240, 271—permanent: 17, 18, 26, 88—total: 14, 15, 17, 18, 19, 59, 237—change in review: 32—subsequent: 32—duration uncertain: 262—relief from: 7—before accident: 21—test of: 242—terminating: 262, 263.
- Disfigurement**: 14, 227-229.
- Dismissal**: 258.
- Disobedience**—to orders: 102
- Disputed questions of law and fact**: 26.
- Distribution**—to dependents: 13-18.
- Districts**—of State: 313.
- Diversity of citizenship**: 218.
- Docket**: 270.
- Door**: Safety Act.
- Drink**—injury while getting: 101; Intoxication.
- Drugs**—manufacture of: 196.
- Due process of law**: Constitution.
- Dust**: Safety Act.
- Dynamo**: Safety Act.

E.

- Earnings**—basis of computation: 12, 13, 18, 20, 21, 68, 86, 114, 115, 225, 228, 229, 240, 242—overtime: 20.
- Egress**—means of: Safety Act.
- Election**—to accept or reject act: 7, 10, 62, 52, 115—by minor: 219—notice of: 113—forms: 279—act not compulsory: 7, 43, 50, 51, 55, 56, 65.

- Electric work**—extra-hazardous: 9—apparatus—transmission: Safety Act.
- Eleemosynary corporation**—employer: 18, 208.
- Elevator**: 178; Safety Act.
- Emery wheel**: Safety Act, Blower Act.
- Employment**: 7, 20—offer of: 241—arising out of, &c.: Accident—in same grade: 20—casual: 11—irregular: 241—return to: 15—risk incident to: 103; statutes regulating: 334.
- Employer**—construed: 10, 208, 209, 268, 269—to file, post and serve notice: 7—to file financial statement, &c.: 36—measure of liability: 8—relief from: 35—when liable for damages: 37—to report accidents: 41, 270.
- Employee**—construed: 10, 11, 268, 269—when deemed to have accepted act: 7—may elect only after employer: 62, 64—notice of election: 8—subrogation: 39—action for damages: 37.
- Engine**: Safety Act.
- English Act**: 100, 103, 202, 317, 324.
- Epilepsy**: 236.
- Equal protection of law**: Constitution.
- Evidence**—of injury—burden of proof: 85, 198, 200, 201, 234, 251, 252—hearsay: 243—before arbitration committee: 250—of failure to give notice: 266—of physician: 244, 246, 249, 329—stenographic report: 24—transcript: 25—notice to introduce—form: 304.
- Examination**—of claimant: 21, 243-246—refusal: 22, 28, 248—request for—form: 291—board may appoint examiner: 28.
- Excavating work**—extra-hazardous: 9, 79.
- Expense**—special: 20, 21.
- Explosive**—gas—vapor—extra-hazardous: 9.
- Extension of time for review**: 27; Continuance.
- Extra-hazardous enterprise**: 9, 10, 49, 76, 78, 79, 174, 267—act automatically applies: 8, 65, 79—presumption of law: 112—contract for: 41—posting notice of rejection: 8.
- Extra-territorial effect**: 220.
- Eye**—injury to: 16, 17, 234, 235, 236.

F.

- Face**—injury to: 14; Disfigurement.
- Factory Inspector**: Safety Act.
- Failing physical power**: 237.
- False representation**: 206.
- Farming**: 10, 75.
- Father**: Dependent.
- Federal Employers' Liability Act**: 11, 217, 319.
- Fees**—Board to fix: 25—for examination: 28—for treatment: 12, 210, 240, 243, 249—of attorney: 28, 31, 243, 262—of physician: 28; Treatment.
- Fellow-servant**: 224; Defenses.

Female employee: Safety Act; Hours of Service Act.
Fight—injury in: 204.
Financial statement: 36, 274, 275.
Finding—special: 29; Decision.
Fine: 39, 43.
Finger—injury to: 15, 16, 230, 232.
Fire: 117.
Fire escape: 391.
First aid: 14; Treatment.
Fixture: 196.
Fluid—inflammable: 9; Safety Act.
Fly-wheel: Safety Act.
Food: Safety Act.
Foot—injury to: 16, 17, 55, 58, 59, 233, 235.
Foreign state—employment in: 220.
Forge: Safety Act.
Forms: 25, 277-312, 395, 396.
Fracture: 237.
Fraud: 29, 42.
Frost bite—injury from: 237.

G.

Gamekeeper—injury to: 204.
Garment Manufacture Act: 373.
Gas—injurious: 9, 117, 237; Safety Act.
German legislation: 316.
Going home—injury while: 200.
Going to work: 200.
Gonorrhea: 237.
Grandparent: 12, 13, 18, 222; Dependent.
Guardian: 18, 19; Incompetent.

H.

Holiday—legal: 392.
Hauling: 79.
Health, Safety and Comfort Act: 335.
Hearing: 27, 28, 250, 260, 271, 272, 299; Administration.
Hand—injury to: 14, 16, 17, 233, 235; Finger; Disfigurement.
Head—injury to: 236; Disfigurement.
Heart disease: 233-237.
Heat—injury from: 105.
Heir: 12, 13, 18, 222-226; Dependent.
Hemorrhage: 90, 236.
Hernia: 235.
Historic review: 316.
Horse—injury from: 200.

Hospital—employer: 10, 208; Treatment.

Hours of Service Act: 377, 391.

Hydrocele: 236.

I.

Ice Cream Manufacture Act: 375.

Illness—absence from work: 20.

Impairment of health: 236.

Implied contract of hire: 209.

Incapacity: Disability.

Incompetent: 18, 19, 34.

Indemnity bond: 36, 275.

Industrial Board—created: 22, 243—members—salary: 23—secretary: 23—seal: 23—powers: 23-33, 69, 72, 75, 80, 97, 243—procedure: 231—record: 25, 243—report: 320—determination: 25, 244—forms: 24—administrative body: 254, 260—not judicial body: 74, 138—challenge of jurisdiction: 250; Administration.

Infectious disease: 234.

Inflammable vapor: 9.

Injury: 7, 12, 13, 14-22—determining nature and extent of: 21—subsequent: 21—third party liable for: 40; Accident.

Insanitary practices: 28, 248, 262; Treatment.

Insolvency: 33, 39.

Installments: 13, 18, 21, 225.

Instructress—injury to: 241.

Instruction: 56, 57, 116.

Insurance: 36, 41, 266, 267, 275—existing—not affected: 38—of contractor: 41.

Interest—three per cent: 19.

Interstate commerce: 11, 210-216; Federal Employers' Liability Act.

Intoxication: 102, 207.

Iron Mangle: Safety Act.

J.

Jointers: Safety Act.

Joists: Safety Act.

Judgment: 31, 32.

Judicial powers: Industrial Board; Constitution.

Jury trial: Constitution.

L.

Ladder: Safety Act.

Laws of United States: 11, 210-216; Federal Employers' Liability Act.

Lead: Occupational Disease Act.

Leg—injury to: 16, 17, 233, 235.
Liability—of third party: 39.
Life expectancy table: 315; Damages.
Lien—award not subject to: 33—award to constitute: 33, 264.
Light: Safety Act.
Lightning—injury from: 104, 237.
Limitation—of time: 35, 42—incompetent: 18.
Line of duty: 12; Accident.
Lineal heir: 12, 13, 18, 222; Dependent.
Lineman—injury to: 126.
Load—per square foot: Safety Act.
Loading—cargo: 9, 105.
Lockjaw: 68, 197.
Lump sum settlement: 13, 18, 19, 92, 106, 129, 239, 272—petition for:
 306—notice of: 307—answer to: 307—order for: 308—rejection: 309
 —dependent aged and infirm: 111.
Lunacy: 236.
Lunch—injury while going to: 189, 190, 199, 200.

M.

Machinist—injury to: 93.
Machinery—extra-hazardous: 103, 205; Safety Act: 335.
Malpractice: 249.
Mandamus: 72, 117.
Master and servant: 322, 324.
Maximum compensation: 18.
Measure of responsibility: 21.
Medical service: Treatment.
Mental incapacity: 34; Incompetent.
Mercantile establishment: Safety Act.
Mileage: 32.
Mill: Safety Act: 335.
Mining: 9, 53, 60, 87, 102, 103, 114, 191, 192, 194, 391.
Minor: 11, 219, 222—notice to: 219; Child Labor Act.
Mischief—injury from: 104.
Misdemeanor: 39, 43.
Molten metal: 9; Safety Act: 335.
Mortgage—award paramount lien: 33.
Motor vehicle: 178, 391.
Moving picture film: 117.
Mother: Dependent.
Monthly statement of accidents: 270.
Municipal corporation—employer: 10, 100, 208, 209.
Municipal ordinance: 10.
Mutual aid: Benefit; Pension.

N.

Name and address—memorandum: 302.
Negligence: 51-67, 114, 324, 327; Defenses.
Nervous system—injury to: 237, 244.
Neurotic state: 236.
New York Act: 323; Constitution.
Notice—of election: 7-8, 25—of accident: 15, 34, 35, 266, 283, 284—of
filing claim: 288—of review: 32—to produce: 290—of hearing: 299—
of default: 38—to minor: 219—to foreman: 266—over telephone:
266—after return to employment: 15.
Noxious Fumes Act: 371.
Next of kin: 12, 13, 34; Dependent.

O.

Oath: 24—of arbitrator: 275—administering: 24.
Obligation to support: 222; Dependent.
Obstructing enforcement of Act: 43.
Occupational Disease Act: 361.
Official: 11, 208, 209.
Officer: 209.
Operation—refusal: 248-249—forcing: 249; Treatment; Fees.
Opinions—Supreme Court: 44-49, 116-139, 149—Appellate Court: 45,
99-116—Federal Court: 156-162.
Option—exercise of: 37, 299.
Ordinance: 10; Safety Act.
Oven: Safety Act.
Over-exertion: 236.
Over-time earnings: 20.

P.

Painter: 209; Safety Act.
Paralysis: 88, 237.
Parent: 12, 13, 18, 34, 222; Dependent.
Paris Green: Occupational Disease Act.
Payments—maximum: 18; Compensation.
Pecuniary assistance: Dependent.
Penalty: 43; Safety Act.
Pension: 11, 17, 18; Benefit Fund; Disability.
Personal representative: 13, 18, 129, 225; Dependent.
Phalange: 15, 16, 230-232; Finger; Toe.
Physician: Treatment; Fees—employee may select: 14—board may
appoint: 28—unskilled: 249; Treatment; Evidence.
Pleading: 261.
Police power: 48, 209, 326; Constitution
Poison: 236-239.
Power-driven machinery: Safety Act.

Precedents: 78, 330.
Probable future payments: 19.
Procedure: 27; Administration.
Proceedings—purely statutory: 125.
Process of law: 328, 388; Constitution.
Public policy—declaration of: 48.
Public service corporation—employer: 10, 208.
Publications: Reference Works.

Q.

Quarrying—extra-hazardous: 9.
Quasi-public service corporation: 209.

R.

Railway: 210, 216; Federal Employers' Liability Act.
Record of proceedings: 29.
Receipt: 275, 309, 310.
Reference Works: 333.
Release: 264, 265.
Religious association—employer: 10; 208.
Remanding: 30.
Remedy—exclusive: 12, 21, 56, 63.
Removal to Federal Court: 218, 220.
Removal of structure: 9; Structure.
Repair of structure: Structure.
Report of accident: 41, 310.
Residence—repair work: 197.
Return to employment: 15.
Review—petition for: 27, 28, 31, 125, 169, 252, 302—of agreement or award: 32—notice of hearing: 303—by industrial board: 270-276; Administration.
Robbery: 203.
Roller: Safety Act.
Rules of Board: 270-276.
Rules of law—may be repealed: 48-55.
Rupture: 237.
Rust—injury from: 195.

S.

Safety Act: 335.
Scaffold: 104; Safety Act.
School district—employer: 10, 208.
Sciatica: 236.
Scire facias: 30, 261, 396.
Seaman—injury to: 105, 201; Carriage.

Settlement: 264, 271, 309.
Shoulder: 233.
Sign painter—injury to: 209.
Stairway: Safety Act: 191.
State—employer: 10, 208.
Statement of fact: 28, 29, 250, 251, 252, 258, 260.
Stenographic report: 28, 29, 250, 251, 252, 258, 260.
Stipulation—form: 292.
Strain: 236, 237.
Structure: 9, 78; Structural Act: 354.
Subpoena: 24, 70, 273, 290.
Subsequent injury: 21, 37.
Suit in chancery: 137.
Sunstroke: 105, 237.
Supersedeas: 31.
Surrogation: 39, 40, 266.
Suspension of business: 172.

T.

Teamster—injury to: 102, 104, 197, 199, 200, 268, 269.
Teeth—injury to: 226, 228, 229.
Telegraph: 126.
Telephone—notice over: 266.
Third party—when liable: 39, 266.
Thumb—injury to: 15, 230-232.
Toe—injury to: 16, 233.
Transportation: 210-216; Carriage.
Treatment: 14, 28, 226, 248, 249, 329.
Trial by jury: 50.
Trial de novo: 132.

U.

United States—laws of: 11; Federal Employers' Liability Act.
University regents—employers: 209.
Usual course of trade: 11, 18, 79, 209.

V.

Vacancy—in committee of arbitration: 26, 27.
Vapor—injurious, inflammable: 9, 84.
Ventilation: Safety Act.
Violation—of rules: 205, 206—of act: 43.
Verdict: 85, 87.
Viaduct: Safety Act.
Village—employer: 10, 208.
Vision: Eye.

W.

- Wages:** 39, 391, 392.
Waiver: 34, 264, 265.
Warehouse: 9.
Warning of danger: 185.
Washroom Act: 389.
Watchman—injury to: 204; Assault.
Water—carriage by: 210.
Waterworks: 100.
Widow: 12, 13, 18, 222; Dependent.
Wilful misconduct: 206.
Witness: 24, 252-261.
Writ of error: 30, 261, 263; Courts; Appeal.







UC SOUTHERN REGIONAL LIBRARY FACILITY



A 000 703 126 3

